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March 10, 1997

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WASHINGTON, DC

WHEN: March 18, 1997 at 9:00 am

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Reader Aids
Additional information, including a list of public laws, telephone numbers, reminders, and finding aids, appears in the Reader Aids section at the end of this issue.

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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
Vol. 62, No. 46
Monday, March 10, 1997

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 351 and 630

RIN 3206–AH64

Reduction in Force and Mandatory Exceptions

AGENCY: Office of Personnel Management.

ACTION: Interim rulemaking.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations that implement recent legislation giving employees the right to use annual leave to establish initial retirement eligibility for employees in reduction in force and other restructuring situations. These regulations also implement related provisions concerning the availability of annual leave to qualify for continuance of health benefits in the same situation.

DATES: These regulations are effective March 10, 1997. Comments must be received on or before May 9, 1997.

ADDRESSES: Send or deliver written comments to: Mary Lou Lindholm, Associate Director for Employment Service, Room 6F08, Officer of Personnel Management, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: (part 351) Thomas A. Glennon or Edward P. McHugh, (202) 606–0960, FAX (202) 606–2329; (part 630) Jo Ann Perrini, (202) 606–2858, FAX (202) 606–0824.

SUPPLEMENTARY INFORMATION: Section 634 of the Treasury, Postal Service, and General Government Appropriations Act, 1997, as contained in section 101(f) of the Omnibus Consolidated Appropriations Act, 1997 (P.L. 104–208, approved September 30, 1996), provides that an employee who is being involuntarily separated from an agency due to reduction in force or transfer of function may elect to use annual leave and remain on the agency's rolls after the effective date the employee would otherwise have been separated in order to establish initial eligibility for immediate retirement, including discontinued service or voluntary early retirement. The same option is also available to acquire eligibility to continue health benefits into retirement. These provisions are codified in new 5 U.S.C. 6302(g).

Since January 1993, OPM has provided similar benefits by regulation. Presently, an agency may elect to retain on annual leave an employee who has received a specific reduction in force notice so that the employee may establish initial eligibility for retirement, and/or for continuance of health benefits into retirement (58 FR 5563, January 22, 1993, as amended at 60 FR 2678, January 11, 1995). For an employee to achieve initial eligibility in a reduction in force situation, agencies use a ''Permissive Temporary Exception'' under authority of section 5 CFR 351.608(d) to retain an employee past the effective date that the employee would have been separated.

The new 5 U.S.C. 6302(g) required two major changes to OPM's regulatory provisions: (1) an employee who is being involuntarily separated now has a right to use his or her annual leave to achieve initial eligibility for retirement and/or continued health benefits coverage; and (2) this right extends to transfer of function relocation situations.

To implement 5 U.S.C. 6302(g), section 5 CFR 351.606, Mandatory exceptions, is revised by adding a new paragraph (b).

Section 5 CFR 351.606(b)(1) provides that an employee who is being involuntarily separated from an agency because of reduction in force under authority of 5 CFR part 351 may elect to use annual leave past the date that the employee would otherwise have been separated for the purpose of establishing initial eligibility under sections 5 U.S.C. 8336, 8412, or 8414 for immediate retirement, including discontinued service or voluntary early retirement.

Section 5 CFR 351.606(b)(1) also provides the same election option so that an employee who is being involuntarily separated from an agency because of reduction in force may use annual leave for the purpose of acquiring initial eligibility under 5 U.S.C. 8905 to continue health benefits into retirement.

Section 5 CFR 351.606(b)(2) provides that an employee who is being involuntarily separated as an adverse action because of the employee's decision to decline relocation (including transfer of function) may use annual leave to remain on the agency's rolls after the effective date of the relocation to establish initial eligibility for immediate retirement under 5 U.S.C. 8336, 8412, or 8414 (including discontinued service or voluntary early retirement), and/or to establish initial eligibility under 5 U.S.C. 8905 to continue health benefits coverage into retirement.

Section 5 CFR 351.606(b)(3) provides that the entitlements under 5 U.S.C. 6302(g) apply to employees covered by chapter 63 of title 5, United States Code.

Section 5 CFR 351.606(b)(4) provides that an agency may not retain any employee under the provisions of 5 U.S.C. 6302(g) past the date that the employee first becomes eligible for immediate retirement, and/or for continuation of health benefits into retirement.

Section 5 CFR 351.606(b)(5) provides that, except as permitted by 5 CFR 351.608(d), an agency may not approve an employee's use of any other type of leave after the employee has been retained under a temporary exception.

Section 5 CFR 351.606(b)(6) clarifies that the annual leave that may be used for the purpose of remaining on an agency's rolls to establish eligibility for immediate retirement and/or establish initial eligibility to continue health benefits coverage into retirement is described in 5 CFR 630.212.

Section 630.212 states that all accumulated, accrued, and restored annual leave to an employee's credit prior to the effective date of a reduction in force or relocation and annual leave earned by an employee while in a paid leave status after the effective date of the reduction in force or relocation may be used for these purpose. However, annual leave that is advanced to an employee under 5 U.S.C. 6302(d) may not be used for these purposes. In addition, an employing agency may permit an approved leave recipient to use for these purposes any or all annual leave donated under 5 CFR part 630,

subpart I, or made available under 5 CFR part 630, subpart J, as of the effective of the reduction in force or relocation.

In conforming changes, section 5 CFR 351.606(a) is revised with a reference label, and former section 5 CFR 351.606(b) is found in a new section 5 CFR 351.606(c), also with a reference label.

In another conforming change, section 5 CFR 351.608 is revised as a result of the entitlements provided under 5 U.S.C. 6302(g). Also, a new section 5 CFR 351.608(e) provides that an employee who is not covered by chapter 63 of title 5, United States Code, but who is being involuntarily separated from an agency because of reduction in force under part 5 CFR 351, may, at the agency's discretion, elect to use annual leave past the date that the employee would otherwise have been separated for the purpose of establishing initial eligibility under sections 5 U.S.C. 8336, 8412, or 8414 (or other authority) for immediate retirement, including discontinued service or voluntary early retirement, and/or establishing eligibility under 5 U.S.C. 8905 (or other authority) to continue health benefits coverage into retirement.

An additional conforming change revises section 351.506(b) to provide, consistent with prior policy, that the retention standing of each employee retained in a competitive level as an exception under section 351.606(b), as well as sections 351.607 or section 351.608, is determined as of the date the employee would have been released had the exception not been used. The retention standing of each employee retained under any of these three exceptions remains fixed until completion of the reduction in force action which resulted in the mandatory or permissive temporary retention.

Waiver of Notice of Proposed Rulemaking and Delay in Effective Date

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking because it would be contrary to the public interest to delay access to benefits. Also, pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists to make this amendment effective in less than 30 days. The delay in the effective date is being waived because these regulations provide a benefit authorized by statute rather than eliminating or modifying existing benefits. This amendment gives full effect to the benefits extended by the amended provisions of the statute at the earliest practicable date.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it only affects Federal employees.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in Parts 351 and 630

Administrative practice and procedure, Government employees.

U.S. Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM is amending parts 351 and 630 of title 5, Code of Federal Regulations, as follows:

PART 351—REDUCTION IN FORCE

1. The authority citation for part 351 continues to read as follows:

Authority: 5 U.S.C. 1302, 3502, 3503; sec. 351.801 also issued under E.O. 12828, 58 FR 2965.

2. In § 351.506, paragraph (b) is revised to read as follows:

§ 351.506 Effective date of retention standing.

* * * * *

(b) The retention standing of each employee retained in a competitive level as an exception under § 351.606(b), § 351.607, or § 351.608, is determined as of the date the employee would have been released had the exception not been used. The retention standing of each employee retained under any of these provisions remains fixed until completion of the reduction in force action which resulted in the temporary retention.

* * * * *

3. § 351.606 is revised to read as follows:

§ 351.606 Mandatory exceptions.

(a) *Armed Forces restoration rights.* When a agency applies § 351.601 or § 351.605, it shall give retention priorities over other employees in the same subgroup to each group I or II employee entitled under 38 U.S.C. 2021 or 2024 to retention for, as applicable, 6 months or 1 year after restoration, as provided in part 353 of this chapter.

(b) *Use of annual leave to reach initial eligibility for retirement or continuance of health benefits.* (1) An agency shall make a temporary exception under this section to retain an employee who is being involuntarily separated under this part, and who elects to use annual leave to remain on the agency's rolls after the effective date the employee would otherwise have been separated by reduction in force, in order to establish initial eligibility for immediate retirement under 5 U.S.C. 8336, 8412, or 8414, and/or to establish initial eligibility under 5 U.S.C. 8905 to continue health benefits coverage into retirement.

(2) An agency shall make a temporary exception under this section to retain an employee who is being involuntarily separated under authority of part 752 of this chapter because of the employee's decision to decline relocation (including transfer of function), and who elects to use annual leave to remain on the agency's rolls after the effective date the employee would otherwise have been separated by adverse action, in order to establish initial eligibility for immediate retirement under 5 U.S.C. 8336, 8412, or 8414, and/or to establish initial eligibility under 5 U.S.C. 8905 to continue health benefits coverage into retirement.

(3) An employee retained under paragraph (b) by this section must be covered by chapter 63 of title 5, United States Code.

(4) An agency may not retain an employee under paragraph (b) of this section past the date that the employee first becomes eligible for immediate retirement, or for continuation of health benefits into retirement, except that an employee may be retained long enough to satisfy both retirement and health benefits requirements.

(5) Except as permitted by 5 CFR 351.608(d), an agency may not approve an employee's use of any other type of leave after the employee has been retained under a temporary exception authorized by paragraph (b) of this section.

(6) Annual leave for purposes of paragraph (b) of this section is described in § 630.212 of this chapter.

(c) *Documentation.* Each agency shall record on the retention register, for inspection by each employee, the reasons for any deviation from the order of release required by § 351.601 or § 351.605.

4. Section 351.608 is revised to read as follows:

§ 351.608 Permissive temporary exceptions.

(a) *General.* (1) In accordance with this section, an agency may make a temporary exception to the order of release in § 351.601, and to the action provisions of § 351.603, when needed to retain an employee after the effective date of a reduction in force. Except as

otherwise provided in paragraphs (c) and (e) of this section, an agency may not make a temporary exception for more than 90 days.

(2) After the effective date of a reduction in force action, an agency may not amend or cancel the reduction in force notice of an employee retained under a temporary exception so as to avoid completion of the reduction in force action. This does not preclude the employee from receiving or accepting a job offer in the same competitive area in accordance with a Reemployment Priority List established under part 330, subpart B, of this chapter, or under a Career Transition Assistance Plan established under part 330, subpart E, of this chapter, or equivalent programs.

(b) *Undue interruption.* An agency may make a temporary exception for not more than 90 days when needed to continue an activity without undue interruption.

(c) *Government obligation.* An agency may make a temporary exception to satisfy a Government obligation to the retained employee without regard to the 90-day limit set forth under paragraph (a)(1) of this section.

(d) *Sick leave.* An agency may make a temporary exception to retain on sick leave a lower standing employee covered by chapter 63 of title 5, United States Code (or other applicable leave system for Federal employees), who is on approved sick leave on the effective date of the reduction in force, for a period not to exceed the date the employee's sick leave is exhausted. Use of sick leave for this purpose must be in accordance with the requirements in part 630, subpart D, of this chapter (or other applicable leave system for Federal employees). Except as authorized by § 351.606(b), an agency may not approve an employee's use of any other type of leave after the employee has been retained under this paragraph (d).

(e)(1) An agency may make a temporary exception to retain on accrued annual leave a lower standing employee who:

(i) Is being involuntarily separated under this part;

(ii) Is covered by a Federal leave system under authority other than chapter 63 of title 5, United States Code; and,

(iii) Will attain first eligibility for an immediate retirement benefit under 5 U.S.C. 8336, 8412, or 8414 (or other authority), and/or establish eligibility under 5 U.S.C. 8905 (or other authority) to carry health benefits coverage into retirement during the period represented by the amount of the employee's accrued annual leave.

(2) An agency may not approve an employee's use of any other type of leave after the employee has been retained under this paragraph (e).

(3) This exception may not exceed the date the employee first becomes eligible for immediate retirement or for continuation of health benefits into retirement, except that an employee may be retained long enough to satisfy both retirement and health benefits requirements.

(4) Accrued annual leave includes all accumulated, accrued, and restored annual leave, as applicable, in addition to annual leave earned and available to the employee after the effective date of the reduction in force. When approving a temporary exception under this provision, an agency may not advance annual leave or consider any annual leave that might be credited to an employee's account after the effective date of the reduction in force other than annual leave earned while in an annual leave status.

(f) *Other exceptions.* An agency may make a temporary exception under this section to extend an employee's separation date beyond the effective date of the reduction in force when the temporary retention of a lower standing employee does not adversely affect the right of any higher standing employee who is released ahead of the lower standing employee. The agency may establish a maximum number of days, up to 90 days, for which an exception may be approved.

(g) *Notice to employees.* When an agency approves an exception for more than 30 days, it must:

(1) Notify in writing each higher standing employee in the same competitive level reached for release of the reasons for the exception and the date the lower standing employee's retention will end; and

(2) List opposite the employee's name on the retention register the reasons for the exception and the date the employee's retention will end.

PART 630—ABSENCE AND LEAVE

5. The authority citation for part 630 continues to read as follows:

Authority: 5 U.S.C. 6311; § 630.301 also issued under Pub. L. 103–356, 108 Stat. 3410; § 630.303 also issued under 5 U.S.C. 6133(a); §§ 630.306 and 630.308 also issued under 5 U.S.C. 6304(d)(3), Pub. L. 102–484, 106 Stat. 2722, and Pub. L. 103–337, 108 Stat. 2663; subpart D also issued under Pub. L. 103–329, 108 Stat. 2423; § 630.501 and subpart F also issued under E.O. 11228, 30 FR 7739, 3 CFR 1974 Comp., p. 163; subpart G also issued under 5 U.S.C. 6305; subpart H also issued under 5 U.S.C. 6326; subpart I also issued under 5 U.S.C. 6332, Pub. L. 100–566, 102 Stat. 2834, and Pub. L. 103–103, 107 Stat. 1022, subpart J also issued under 5 U.S.C. 6362, Pub. L. 100–566, and Pub. L. 103–103; subpart K also issued under Pub. L. 102–25, 105 Stat. 92; and subpart L also issued under 5 U.S.C. 6387 and Pub. L. 103–3, 107 Stat. 23.

6. In part 630, § 630.212 is added to read as follows:

§ 630.212 Use of annual leave to establish initial eligibility for retirement or continuation of health benefits.

(a) An employee may elect to use annual leave and remain on the agency's rolls in order to establish initial eligibility for immediate retirement under 5 U.S.C. 8336, 8412, or 8414, and/or to establish initial eligibility under 5 U.S.C. 8905 to continue health benefits coverage into retirement, as provided in:

(1) Section 351.606(b)(1) for an employee who would otherwise have been separated by reduction in force procedures under part 351 of this chapter; or

(2) Section 351.606(b)(2) of this chapter for an employee who would otherwise have been separated by adverse action procedures under authority of part 752 of this chapter because of the employee's decision to decline relocation (including transfer of function).

(b)(1) Annual leave that may be used for the purposes described in paragraph (a) of this section includes all accumulated, accrued, and restored annual leave to the employee's credit prior to the effective date of the reduction in force or relocation (including transfer of function) and annual leave earned by an employee while in a paid leave status after the effective date of the reduction in force or relocation (including transfer of function).

(2) Annual leave that is advanced to an employee under 5 U.S.C. 6302(d), including any advance annual leave that may be credited to an employee's leave account after the effective date of the reduction in force or relocation (including transfer of function), may not be used for purpose of this section.

(3) For purposes of this section, the employing agency may approve the use of any or all annual leave donated to an employee under part 630, subpart I, of this chapter (Voluntary Leave Transfer Program), or made available to the employee under part 630, subpart J, of this chapter (Voluntary Leave Bank Program), as of the effective date of the reduction in force or relocation.

[FR Doc. 97–5835 Filed 3–7–97; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–AGL–18]

Establishment of Class E2 Airspace; Sawyer Airport, Gwinn, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects the previous airport name from K.I. Sawyer AFB, Marquette, MI, to Sawyer Airport, Gwinn, MI, as stated in Docket 96–AGL–18. Also, the legal description has been changed to reflect the correct wording for a 24 hour service due to an AWOS being installed to provide continuous weather reporting. A minor correction is also being made in the geographic coordinates of the final rule that was published in the Federal Register on January 16, 1997 (62 FR 2265).

EFFECTIVE DATE: 0901 UTC, March 27, 1997.

FOR FURTHER INFORMATION CONTACT:

John A. Clayborn, Air Traffic Division, Operations Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 97–1115, Airspace Docket No. 96–AGL–18, published on January 16, 1997 (62 FR 2265), revised the airport name and the seconds of the longitude for Sawyer Airport, Gwinn, MI. This action corrects those errors.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the airport name, geographic coordinates and the legal description for the Class E2 airspace area at Gwinn, MI, as published in the Federal Register on January 16, 1997 (62 FR 2265), (Federal Register Document 97–1115; page 2265, column 3), are corrected as follows:

§ 71.71 [Corrected]

* * * * *

AGL MI E2 Sawyer, MI [Revised]

By removing ''(lat. 46°21′13″ N, long. 87°23′43″ W.)'' and substituting ''(lat. 46°21′13″ N, long. 87°23′45″ W.).''

Within a 4.6 mile radius of Sawyer Airport.

* * * * *

Issued in Des Plaines, IL, on February 26, 1997.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 97–5551 Filed 3–7–97; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 96–AGL–19]

Revision of Class E5 Airspace; Sawyer Airport, Gwinn, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects the previous airport name from K.I. Sawyer AFB, Marquette, MI, to Sawyer Airport, Gwinn, MI, as stated in Docket 96–AGL–19. Also, corrects an error in the geographic coordinates of the final rule that was published in the Federal Register on January 16, 1997 (62 FR 2265).

EFFECTIVE DATE: 0901 UTC, March 27, 1997.

FOR FURTHER INFORMATION CONTACT:

John A. Clayborn, Air Traffic Division, Operations Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 97–1114, Airspace Docket No. 96–AGL–19, published on January 16, 1997 (62 FR 2265), revised the airport name and the seconds of the latitude for Sawyer Airport, Gwinn, MI. An error was discovered in the title, Summary and The Rule of the docket. This action corrects the title, Summary and The Rule to indicate the docket action to be modification versus establishment. Class E airspace existed prior to accommodate the Instrument Landing System (ILS).

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the airport name and the geographic coordinates for the Class E5 airspace area at Gwinn, MI, as published in the Federal Register on January 16, 1997 (62 FR 2265), (Federal Register Document 97 97–1114; page 2266, column 2), are corrected as follows:

§ 71.71 [Revised]

* * * * *

AGL MI E5 Sawyer, MI [Revised]

By removing ''(lat. 46°21′13″ N, long. 87°23′43″ W.)'' and substituting ''(lat. 46°21′13″ N, long. 87°23′45″ W.).''

* * * * *

Issued in Des Plaines, IL, on February 26, 1997.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 97–5550 Filed 3–7–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM96–1–004; Order No. 587–C]

Standards for Business Practices of Interstate Natural Gas Pipelines

Issued March 4, 1997.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is amending its open access regulations by incorporating by reference standards promulgated by the Gas Industry Standards Board (GISB). These standards require interstate natural gas pipelines to publish specified information on Internet Web pages and to follow certain new and revised business practices procedures. These business practices standards supplement standards adopted by the Commission in Order No. 587. 61 FR 39053 (Jul. 26, 1996).

DATES: This rule is effective April 9, 1997.

Pipelines are to make *pro forma* tariff filings to implement the business practices standards by May 1, 1997. Implementation of the Internet Web page standards must take place by August 1, 1997, and the revised and new business practices standards by November 1, 1997.

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street, N.E., Washington DC, 20426.

FOR FURTHER INFORMATION CONTACT:

Michael Goldenberg, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, (202) 208–2294.

Marvin Rosenberg, Office of Economic Policy, Federal Energy Regulatory Commission, 888 First Street, N.E.,

Washington, DC 20426, (202) 208–1283.
Kay Morice, Office of Pipeline Regulation, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, (202) 208–0507.

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Standards for Business Practices of Interstate Natural Gas Pipelines; Order No. 587–C—Final Rule.

Docket No. RM96–1–004

Issued March 4, 1997.

The Federal Energy Regulatory Commission (Commission) is amending its open access regulations to adopt standards requiring interstate natural gas pipelines to publish certain information on Internet Web Pages and to implement new business practice standards covering nominations and flowing gas. The regulations incorporate by reference standards promulgated by the Gas Industry Standards Board (GISB), a private standards organization devoted to developing standards representing a consensus of the interests in the natural gas industry.

I. Background

In Order No. 587,[1] the Commission incorporated by reference consensus standards developed by GISB covering certain industry business practices—Nominations, Flowing Gas, Invoicing, and Capacity Release—as well as datasets that detailed the data requirements needed to conduct business transactions in these areas. On November 13, 1996, the Commission issued a Notice of Proposed Rulemaking (NOPR)[2] proposing to adopt additional standards submitted by GISB (on September 30, 1996) in three general areas: communication standards for conducting standardized business transactions across the Internet, standards for providing other information on Internet Web pages, and five revisions to existing business practices standards and 25 new principles, definitions, and standards covering nominations and flowing gas. The Commission already has issued, on January 30, 1997, a final rule incorporating by reference the standards for conducting the business transactions over the Internet. With respect to the remaining two areas—publication of information on Internet Web pages and the supplemental business practices standards, the NOPR proposed to follow GISB's proposed schedule of a final rule to be issued in March 1997, with implementation of the additional Internet standards in August of 1997 and pipeline tariff filings for the business practices standards to be made in May, June, and July of 1997, with implementation in November 1997.

In addition, the NOPR gave notice of a staff technical conference that would be convened to discuss the future direction of standardization and certain issues that had been disputed during the GISB meetings. The technical conference was held on December 12 and 13, 1996, with comments on the conference to be submitted by February 21, 1997.

Fifteen comments were filed on the NOPR from Natural Gas Supply Association, Williams Interstate Natural Gas System (WINGS), Burlington Resources Oil & Gas Company (Burlington Resources), Natural Gas Clearinghouse, Conoco, Inc., and Vastar Gas Marketing Inc.(filing jointly) (NGC/Conoco/Vastar), Pacific Gas and Electric Company (PG&E), Williston Basin Interstate Pipeline Company (Williston Basin), Altra Energy Technologies, L.L.C. (Altra), Energy Managers Association (Energy Managers), Gas Industry Standards Board (GISB), NorAm Gas Transmission Company and Mississippi River Transmission Corporation (filing jointly) (NorAm), ANR Pipeline Company and Colorado Interstate Gas Pipeline Company (filing jointly), Enron Capital & Trade Resources Corp. (Enron Capital & Trade Resources), TransCapcity Limited Partnership (limited to technical conference issues), Southern California Edison Company (SoCal Edison), and the PanEnergy Companies. On February 21, 1997, comments on the technical conference were filed.

II. Discussion

The Commission is incorporating by reference the GISB standards for providing information on Internet Web pages, with the exception of Standard 4.3.5, which provides that the documents posted on pipeline Web pages will be downloadable in a GISB-specified electronic structure. The Commission is not adopting this standard because GISB has failed to approve the requisite electronic structure.

The Commission is incorporating by reference the revisions to and the new business practices principles, definitions, and standards, with the exception of three standards, Nomination Standard 1.3.32 dealing with intra-day nominations and Flowing Gas Standards 2.3.29 and 2.3.30 dealing the obligation of pipelines to enter into operational balancing agreements (OBAs) and the ability of shippers to net imbalances across contracts, respectively. While the Commission agrees that standards are needed in these areas, it is not accepting these standards at this time because the scope of the pipelines'' obligations to comply are not clear.

The Commission also is making one change to the schedule proposed by GISB. Rather than staggered compliance filings in May, June, and July, all pipelines must file their *pro forma* tariff sheets on May 1, 1997. Pipelines are

[1] Standards For Business Practices Of Interstate Natural Gas Pipelines, Order No. 587, 61 FR 39053 (Jul. 26, 1996), III FERC Stats. & Regs. Regulations Preambles ¶ 31,038 (Jul. 17, 1996), *reh'g denied*, Order No. 587–A, 61 FR 55208 (Oct. 25, 1996), 77 FERC ¶ 61,061 (Oct. 21, 1996), Order No. 587–B, 62 FR 5521 (Feb. 6, 1997), 78 FERC ¶ 61076 (1997).

[2] Standards For Business Practices Of Interstate Natural Gas Pipelines, Notice of Proposed Rulemaking, 61 FR 58790 (Nov. 19, 1996), IV FERC Stats. & Regs. Proposed Regulations ¶ 32,521 (Nov. 13, 1996).

required to implement the requirements to publish information on Web pages by August 1, 1997 and to implement the business practices standards by November 1, 1997.

NGC/Conoco/Vastar and Energy Managers contend that GISB was unable to satisfactorily resolve issues in several hotly disputed areas, and they ask the Commission to act now to adopt standards in these areas that they have proposed.[3] These suggested standards are all within the areas discussed at the December 12 and 13, 1996 technical conference on which comments were filed on February 21, 1997.

The Commission, therefore, will not act in these areas until it has an opportunity to review the technical conference comments. The Commission, however, is firmly committed to standardizing those elements of pipeline service that will increase the efficiency of the interstate pipeline grid as well as the competitive position of the natural gas industry as a whole. As the Commission recognized in Order No. 587, standardization is an on-going process, with new standards being developed and refinements and enhancements made to existing standards as experience is gained.[4]

The Commission recognizes that GISB too is continuing to consider revisions and new standards in some of the same areas.[5] If progress in developing standards is impeded by intractable disputes over policy issues, the Commission will resolve these policy issues to expedite the process. The Commission urges GISB to identify such issues as soon as they are manifest. Once the Commission makes a determination, GISB can then develop the technical standards needed for implementation.

A. Posting of Information on Internet Web Pages

GISB passed two standards relating to the posting of information on Internet Web pages. Standard 4.3.6 requires pipelines to establish a World Wide Web home page that provides the following information: notices (critical notices, operation notices, system-wide notices); Order No. 566 affiliated marketer information (affiliate allocation log, discount postings); operationally available and unsubscribed capacity; Index of Customers; and the pipeline's tariff. Standard 4.3.5 requires that the documents maintained on the pipeline's designated Web site will be downloadable on demand in a GISB specified electronic structure. All commenters support these requirements.

However, in the November 13, 1996 NOPR, the Commission stated that GISB needed to file the electronic structures referenced in Standard 4.3.5 prior to the issuance of the final rule, so these structures could be included in the rule.[6] Since GISB has not yet approved these electronic structures, the Commission cannot adopt Standard 4.3.5.

The Commission will adopt Standard 4.3.6, since specification of the electronic structure for file downloads is not required for pipelines to implement this standard's requirement for publishing the specified information on Web pages. The ability to download information, however, is critical for customers who do not want to read the information on-line or who want the information in computer-readable form. GISB, therefore, needs to adopt the required electronic structure quickly. A rapid determination will still enable the Commission to issue a final rule in time for the download structure to be implemented on August 1, 1997, at the same time as the requirement for publishing the information on Web pages.

Williston Basin raises questions about the portion of Standard 4.3.6 which states that pipelines should make all pertinent information and functions now performed or contained on the pipelines'' proprietary Electronic Bulletin Boards (EBBs) available in one mode of communication (either through the Internet or another technology) within a reasonable time after standards are developed for such functions. Williston Basin contends that, while EBB information is being transferred to the Internet, pipelines should not have to develop GISB-approved procedures for both the Internet and EBBs because to do so would be burdensome and cost prohibitive. Williston Basin also requests clarification of the terms ''pertinent EBB functions'' and a ''reasonable amount of time,'' claiming that they do not provide pipelines with specific direction to implement the standards.

Standard 4.3.6 applies only to providing information at pipeline Web sites. Thus, Williston Basin is not required by this standard to make any changes to its EBB procedures.[7] There is no need to interpret the terms referenced by Williston Basin. This portion of the standard is hortatory, establishing the consensus of the industry on the goals to be achieved. The standard requires no further implementation by the pipelines until additional standards are developed. Williston Basin will have the opportunity at that time to raise any concerns with implementation.

B. Business Practices Standards

The revised and new business practices principles, definitions, and standards[8] clarify and supplement the standards adopted in Order No. 587.[9] In part, these standards require pipelines to honor shippers'' determinations of delivery priorities, clarify shipper's abilities to correct operational flow orders (OFOs), and standardize the methods for calculating the amount of gas needed to reimburse pipelines for compressor fuel, so that shippers can accurately submit nominations for transportation across multiple pipelines, with many zones.

Out of the 30 business practices standards passed by GISB, the Commission is not adopting three of the standards at this time, because the pipelines' obligations under the standards are unclear. The lack of clarity in these standards is understandable given the tight deadlines on GISB and the obvious need for the various segments of the industry to reach compromises. However, during the process of reviewing the filings to comply with Order No. 587, it became clear that adoption of imprecise standards can sometimes cause more harm than good. When obligations are

[3] The proposed standards involve pooling, title transfer tracking, ranking of gas packages, predetermined allocations, intra-day nominations, operation flow orders, fuel sales, and imbalance trading.

[4] Order No. 587, 61 FR at 39057, III FERC Stats. & Regs. Preambles at 30,060.

[5] For instance, during the technical conference, participants pointed out that the disputed issues relating to pooling, title transfer tracking, and gas package rankings, are part of a pilot test being conducted by GISB on title transfer tracking. Transcript of December 12, 1996 Conference, at 183. The results of this pilot test are due in September of 1997.

[6] 61 FR at 58793, IV FERC Stats. & Regs. Proposed Regulations at 33,259.

[7] Pipelines have to make changes to their EBBs when required by other standards. For instance, Invoicing Standard 3.3.2 requires that all paper and electronic transactions use standard field name descriptors. This would apply both to paper and EBB invoicing procedures. *See* GISB Interpretation C96012, approved February 6, 1997, http://www.NeoSoft.com/~gisb/gisb.htm (Committees, Sub-Committees, and Task Forces) (Feb. 20, 1997).

[8] The revised standards are 1.3.7, 1.3.14, 1.3.23, 2.3.9, and 5.3.22. The new principles are 1.1.12 through 1.1.16, and 2.1.2 and 2.1.3. The new definitions are 1.2.5 through 1.2.7 and 2.2.1. The new standards are 1.3.24 through 1.3.31, 1.3.33, 1.3.34, and 2.3.31.

[9] After issuance of the November 13, 1996 NOPR, GISB approved a change to Flowing Gas Standard 2.3.9 that clarified the language, but did not change the meaning of the standard. The Commission is adopting the revised language.

not fully defined by the standard, pipelines propose divergent and non-standardized approaches. The adoption of divergent approaches often runs counter to the very purpose of standardization—the creation of efficiency through adoption of uniform procedures.

For these three standards, the Commission has been unable to discern from the GISB documentation the intended scope and meaning of a standard. The discrepancies in implementation, therefore, make the compliance filings much more difficult to process because the Commission has difficulty, on an individual case basis, trying to reconcile the divergent approaches, especially given the short time frames established for compliance filings.

Rather than approving standards which are vague and then try to create standardization during the compliance process, the Commission will not accept the standards at this time. Standards in these areas are needed. The Commission, however, will give GISB and the industry more time—until September 1, 1997—in which to reconsider and devise standards that delineate clearly the pipelines' obligations in these areas. If no resolution is reached by then, the Commission will take appropriate action to devise the needed standards.

The Commission will address below the specifics of the three standards that are not being accepted. It will also address the comments regarding a standard the Commission is accepting—Nomination Standard 1.3.28 dealing with the posting of fuel rate standards.

1. Intra-Day Nominations and Standard 1.3.32

GISB proposed one additional definition and a new intra-day nomination standards. Definition 1.2.7 provides for two types of intra-day nominations: (i) A nomination received during the gas day for the same day of gas flow, and (ii) A nomination received after the nomination deadline for the following gas day. Standard 1.3.32 provides that:

> All pipelines should allow at least one intra-day nomination per day for each transportation service that allows for intra-day nominations. Additional intra-day nominations should be permitted on a best efforts basis.

WINGS, NGC/Conoco/Vastar, Energy Managers, and Burlington Resources raise questions about the intra-day nomination process. WINGS comments that additional standards for intra-day nominations are needed, to avoid discrepancies in pipeline implementation of the two kinds of intra-day nominations defined by GISB. Energy Managers contends that Standard 1.3.32 is a poor standard and should not be adopted, and it suggests three replacement standards. NGC/Conoco/Vastar and Burlington Resources contend further intra-day nomination standards are needed. NGC/Conoco/Vastar seek standards to ensure that intra-day nominations are available for all rate schedules and to deal with rescheduling of service that is bumped by a higher priority firm service. Burlington Resources argues that since GISB has not established standards on whether firm intra-day nominations can bump scheduled interruptible service, the Commission should establish a policy on this issue. It maintains that firm service should be given bumping rights to reflect the higher priority of that service, for which shippers are paying a premium price.

The Commission agrees with WINGS that Standard 1.3.32 does not provide sufficient clarity as to what is expected of the pipelines. The term ''best efforts'' as used in this context does not describe exactly when pipelines can decline to process intra-day nominations. For instance, it may mean that pipelines have to process intra-day nominations whenever submitted as long as such nominations do not affect scheduled quantities for other shippers.[10]

The Commission is particularly chary about adopting another non-specific intra-day nomination standard given the lack of standardization in the implementation of the intra-day nomination standards adopted in Order No. 587. Nomination Standard 1.3.10 provides that ''at least one (1) intra-day nomination can be submitted 4 hours prior to gas flow.'' The standard, however, did not specify the method of implementation, and pipelines chose two divergent models: a ''rolling intra-day'' nomination permitting the shipper to choose the time at which it submits the intra-day nomination, which the pipeline then processes in four hours from the time of submission; and a ''batch process'' in which the pipeline sets a specified time for processing intra-day nominations and all intra-day nominations submitted before that time are accumulated and processed together. The batch process also differs from pipeline to pipeline. Pipelines, for instance, have established different times for batching intra-day nominations. In addition, on some pipelines using the batch process, intra-day nominations for firm service bump scheduled interruptible gas.[11] Other batch pipelines propose only that the firm intra-day nominations will be given priority over interruptible intra-day nominations.[12]

This diverse approach means that shippers will be unable to coordinate effectively their intra-day nominations, since an intra-day nomination may be due at one time on one pipeline, while a different time is specified on an interconnecting pipeline. In addition, during the staff technical conference held on December 12 and 13, 1996, other issues relating to intra-day nominations were raised. Some participants favored the rolling intra-day nomination approach over the batch process because it gave shippers more flexibility in scheduling their intra-day nominations.[13] Others raised the question of whether a rolling approach to intra-day nominations can be implemented without a no-bump rule. They claimed that permitting firm intra-day nominations to bump scheduled interruptible transportation would create scheduling difficulties, because each intra-day nomination potentially would affect other nominations, causing a ripple effect up and down the pipeline and interconnecting pipelines.[14]

GISB itself appears to recognize that its current standards do not achieve the necessary standardization. The GISB Executive Committee has voted to establish a task force to examine the lack of coordination in intra-day nomination procedures.

In order to achieve the efficiencies that derive from uniform nomination procedures, greater standardization of intra-day nomination procedures clearly is required. Clarification of the intended meaning of Standard 1.3.32 may not

[10] The Commission already has dealt with the imprecision in the phrase ''for each transportation service that allows for intra-day nominations.'' In Tennessee Gas Pipeline Company, 78 FERC ¶ 61,007, slip op. at 9, the Commission held that all regular open-access services, including interruptible service, must be accorded the right to submit intra-day nominations. The Commission concluded, however, that pipelines could propose a service eliminating the intra-day nomination right for a reduced rate.

[11] Tennessee, for instance, has a batch intra-day process and permits bumping of interruptible with four hours notice to the interruptible shipper. It does not, however, permit bumping for its hourly intra-day nominations (available to firm shippers). Tennessee Gas Pipeline Company, *Pro Forma* Tariff, Article III, section 4 (d)–(m), Sheets 312–314c.

[12] *See* Northern Border Pipeline Company, *Pro Forma* Second Revised Volume No. 1, Pro Forma Sheet Nos. 100 and 101 (when intra-day nominations exceed the capacity of the pipeline firm intra-day nominations have priority over interruptible).

[13] Transcript of December 12, 1996 conference, at 116, 213; Transcript of December 13, 1996 conference, at 127.

[14] Transcript of December 12, 1996 conference, at 117; transcript of December 13, 1996 conference, at 136.

create the needed standardization, and the focus, therefore, should not be on clarifying the existing standard, but on achieving the needed uniformity in the intra-day nomination process. Accordingly, the Commission will review the comments submitted on February 21, 1997 along with any recommendations from GISB filed on September 1, 1997 in determining how to proceed on this issue.

2. Flowing Gas Standards 2.3.29 and 2.3.30

GISB Standard 2.3.29 states:

At a minimum, transportation service providers should enter into Operational Balancing Agreements at all pipeline-to-pipeline (interstate and intrastate) interconnects, where economically and operationally feasible.

GISB Standard 2.3.30 states:

All transportation service providers should allow service requesters (in this instance, service requester excludes agents) to net similarly situated imbalances on and across contracts with the service requester. In this context, ''similarly situated imbalances'' includes contracts with substantially similar financial and operational implications to the transportation service provider.

Energy Managers suggests that the phrase ''economically and operationally feasible'' waters down, and therefore should be removed from, Standard 2.3.29. NGC/Conoco/Vastar state that they support Standard 2.3.30 as long as the term ''similarly situated'' is not read so narrowly as to defeat the purpose of the standard.

While the Commission finds that standards requiring OBAs and netting of imbalances are necessary, the use of the terms ''economically and operationally feasible'' and ''similarly situated financial and operational implications'' do not define precisely enough the pipelines' obligations under the standards. For example, there is no basis for determining whether shippers should be able to net imbalances between an interruptible contract and a firm contract in the same zone. Also, the terms economically feasible and similarly situated financial implications are undefined and seem unnecessary in both standards. If ''financial'' in Standard 2.3.30 refers to the rate paid for service, for instance, there seems no basis for treating a discounted contract differently from a full-rate contract in terms of netting imbalances.[15]

Rather than attempting to deal with the meaning of these terms in individual compliance filings, GISB needs to define precisely the circumstances in which pipelines can decline to permit netting of imbalances. Therefore, the Commission will not be accepting this standard in this rule and will give GISB until September 1, 1997 to clarify these standards.

3. Nomination Standard 1.3.28

Two comments raise questions about Standard 1.3.28, which provides that fuel rates for in-kind fuel reimbursement should be made effective only at the beginning of the month. WINGS expresses concern about this standard because one of its pipelines, Kern River, has little or no system storage. Without storage, WINGS contends that the pipeline may, on rare occasions, have to adjust fuel rates in the middle of the month. WINGS suggests that this standard be made a principle or that, if adopted as a standard, the Commission should not preclude a pipeline from filing to change fuel rates in mid-month upon a showing of need.

The Commission will not change this standard to a principle as requested by WINGS. Standardizing the in-kind reimbursement process for fuel is important to simplify the nomination process, particularly when shippers are transporting gas across many pipelines, with a multiplicity of zones. A consensus of the industry found that to simplify the nomination process, all pipelines must set fuel rates at the beginning of the month. With this limitation on fuel rate changes, shippers can obtain the correct fuel rates at one time and update their computer programs to reflect these rates on a set schedule, without having to be concerned about mid-month, random changes on select pipelines. WINGS fails to provide data or other evidence that pipelines without storage are unable to make adjustments or other arrangements so that they can comply with the standard. For example, Great Lakes Gas Transmission Limited Partnership, another pipeline without storage, posts monthly fuel percentages and makes adjustments for actual fuel use in the percentages for subsequent months.[16]

Enron Capital & Trade Resources seeks clarification that in implementing this standard, pipelines should notify shippers of fuel rate changes no less than 30 days prior to the proposed effective date. Enron Capital & Trade Resources contends that 30-days notice is in accord with the notice requirement for tariff changes contained in section 154.207 of the Commission's regulations.

The Commission will not grant the requested clarification. The standard itself specifies no advance notice period. The purpose of the standard is to establish one date when shippers can obtain fuel reimbursement percentages so that they can program their computers once for the entire month. Thus, the fuel rates need to be posted in sufficient time for shippers to use these rates in making nominations subject to the new rate. To the extent that pipelines make tariff filings to change fuel reimbursement rates, they would have to comply with the Commission filing and notice regulations. Some pipelines, however, have fuel tracking or other provisions in their tariffs which permit changes in fuel rates without tariff filings.[17]

III. Implementation Schedule

Pipelines will be required to implement the Internet Web page standards by August 1, 1997, and the revised and new business practices standards on November 1, 1997. Rather than adopting the staggered schedule for pipeline tariff filings proposed by GISB, the pipelines will be required to make their *pro forma* tariff filings to comply with the standards by May 1, 1997.

The Commission's experience based on the first set of compliance filings is that it takes a substantial period of time to review all of the filings. Under the proposed staggered schedule, 60 tariff filings would be due on July 1, 1997, which would not provide the Commission with sufficient time to review these filings and issue the two rounds of orders in time to meet a November 1, 1997 implementation date.

The Commission recognizes that some pipelines may be in the process of implementing the standards adopted in Order No. 587 at the same time they are making *pro forma* tariff filings to comply with this rule. However, there are many fewer business practices standards adopted in this rule than in Order No. 587, and, more important, implementation of these standards do not require fundamental changes in pipeline operations. They merely build upon the standards previously adopted. Thus, pipelines should not face major obstacles in making the required filings on May 1, 1997, and the Commission will require all filings on this date to

[15] A review of the discussions at the GISB Executive Committee meeting, where the language was developed, does not clarify the intended meaning of the standards. Volume IV, Report of the Gas Industry Standards Board, Docket No. RM96–1–000, 398–99, 412–428 (September 30, 1996). For instance, examples are discussed of situations that might fall within or without the Standards, there was no delineation or agreement on the full scope of the intended meaning.

[16] Great Lakes Gas Transmission Limited Partnership, 76 FERC ¶ 61,260, at 62,333 (1996).

[17] *Id.*

ensure that the filings can be reviewed and processed in a timely fashion.

In making their *pro forma* tariff filings, pipelines must file the *pro forma* sheets as if they are proposed revisions of sheets in the existing tariff volume (with changes identified as provided in § 154.201 of the Commission's regulations) with the words ''Pro Forma'' before the volume name.[18] In addition, in complying with § 154.203 of the Commission's regulations, a pipeline must file as part of its statement of the nature, the reasons, and the basis for the filing, a complete table showing for each GISB standard adopted by the Commission, in this rule, the complying tariff sheet number, and an explanatory statement, if necessary, describing any reasons for deviations from or changes to each GISB standard. Any pipeline seeking waiver or extension of the requirements of this rule is required to file its request within 30 days of the issuance of this rule. Comments on these filings will be due 21 days from the date of filing.

IV. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act of 1980 (RFA)[19] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The regulations adopted in this rule impose requirements only on interstate pipelines, which are not small businesses, and, these requirements are, in fact, designed to reduce the difficulty of dealing with pipelines by all customers, including small businesses. Accordingly, pursuant to section 605(b) of the RFA, the Commission hereby certifies that the regulations adopted in this rule will not have a significant adverse impact on a substantial number of small entities.

V. Environmental Analysis

The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[20] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[21] The action taken here falls within categorical exclusions in the Commission's regulations for rules that are clarifying, corrective, or procedural, for information gathering, analysis, and dissemination, and for sales, exchange, and transportation of natural gas that requires no construction of facilities.[22] Therefore, an environmental assessment is unnecessary and has not been prepared in this rulemaking.

VI. Information Collection Statement

OMB's regulations in 5 CFR 1320.11 require that it approve certain reporting and recordkeeping requirements (collections of information) imposed by an agency. Upon approval of a collection of information, OMB shall assign an OMB control number and an expiration date. Respondents subject to the filing requirements of this Rule shall not be penalized for failing to respond to these collections of information unless the collections of information display valid OMB control numbers.

The collections of information related to the subject Final Rule fall under the existing reporting requirements of FERC–549C, Standards for Business Practices of Interstate Natural Gas Pipelines (OMB Control No. 1902–0174) and FERC–545, Gas Pipeline Rates: Rate Change (Non-Formal) (OMB Control No. 1902–0154). The following estimates of reporting burden are related only to this Rule and include the costs for pipelines to comply with the new and revised business practice standards and the additional costs of implementing the requirement for posting additional information on an Internet Web page. The burden estimates are primarily related to start-up and will not be on-going costs.

Public Reporting Burden: (Estimated Annual Burden).

Affected data collection	Number of respondents	Total responses (annual)	Estimated hours per response	Estimated total hours (annual)
FERC–545	86	86	58	4,988
FERC–549C	86	86	3,147	270,642
Total	86	86	3,205	275,630

The total annual hours for collection (including record keeping, if appropriate) is estimated to total 275,630. The average annualized cost per respondent is projected to be the following:

Affected data collection	Annualized capital/start-up costs per respondent	Annualized costs (operations and maintenance) per respondent	Number of respondents	Total annualized costs
FERC–545	$2,900	0	86	$249,400
FERC–549C	157,350	0	86	13,532,100
Total	160,250	0	86	13,781,500

The business practices standards and Internet protocols adopted in this Rule are necessary to establish a more efficient and integrated pipeline grid. Requiring such standards on an industry-wide basis will reduce the variations in pipeline business and communication practices and will allow buyers to easily and efficiently obtain

[18] *E.g.* Fourth Revised Sheet No. 150, FERC Gas Tariff, Pro Forma Third Revised Volume No. 1. For the electronically filed tariff sheets, ''Pro Forma'' must be inserted at the beginning of the name field (VolumeID) in the Tariff Volume Record, i.e., the TF02 record.

[19] /5 U.S.C. 601–612.

[20] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,783 (1987).

[21] 18 CFR 380.4.

[22] *See* 18 CFR 380.4(a)(2)(ii), 380.4(a)(5), 380.4(a)(27).

and transport gas from all potential sources of supply. The standardization of business practices conforms to the Commission's plan for efficient information collection, communication, and management within the natural gas industry. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

The information required in this Final Rule will be reported directly to the industry users and later be subject to audit by the Commission. The implementation of these data requirements will help the Commission carry out its responsibilities under the Natural Gas Act and coincide with the current regulatory environment which the Commission instituted under Order No. 636 and the restructuring of the natural gas industry.

Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426 [Attention: Michael Miller, Information Services Division, 202–208–1415] or the Office of Management and Budget [Attention: Desk Officer for the Federal Energy Regulatory Commission 202–395–3087].

VII. Effective Date

These regulations are effective April 9, 1997. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a ''major rule'' as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects in 18 CFR Part 284

Continental shelf, Incorporation by reference, Natural gas, Reporting and recordkeeping requirements.

By the Commission.

Lois D. Cashell,

Secretary.

In consideration of the foregoing, the Commission amends Part 284, Chapter I, Title 18, *Code of Federal Regulations*, as set forth below.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

1. The authority citation for Part 284 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7532; 43 U.S.C. 1331–1356.

2. In § 284.10, paragraphs (b)(1)(i) through (b)(1)(v) are revised to read as follows:

§ 284.10 Standards for Pipeline Business Operations and Communications.

* * * * *

(b) * * *

(1) * * *

(i) Nominations Related Standards (Version 1.1, January 31, 1997), with the exception of Standard 1.3.32;

(ii) Flowing Gas Related Standards (Version 1.1, January 31, 1997), with the exception of Standards 2.3.29 and 2.3.30;

(iii) Invoicing Related Standards (Version 1.1, January 31, 1997);

(iv) Electronic Delivery Mechanism Related Standards (Version 1.0, October 24, 1996), with the exception of Standard 4.3.5; and

(v) Capacity Release Related Standards (Version 1.1, January 31, 1997).

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[CO–001–0011; CO–001–0012; CO–001–0013; CO–001–0014; FRL–5692–3]

Clean Air Act Approval and Promulgation of State Implementation Plan for Colorado; Carbon Monoxide Attainment Demonstrations and Related SIP Elements for Denver and Longmont; Clean Air Act Reclassification; Oxygenated Gasoline Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: In this document, EPA is approving the State Implementation Plan (SIP) revisions submitted by the State of Colorado for the purpose of bringing about the attainment of the national ambient air quality standards (NAAQS) for carbon monoxide (CO). The implementation plan revisions were submitted by the State on July 11 and 13, 1994, September 29, 1995, and December 22, 1995 to satisfy certain Federal requirements for an approvable nonattainment area CO SIP for Denver and Longmont. This action includes approval of revisions to Colorado Regulations 11 (vehicle inspection and maintenance (I/M)) and 13 (oxygenated fuels) submitted to satisfy conditions in the SIP, and further revisions to Regulation 13 to shorten the effective period of the oxygenated fuels program. It also includes reclassification of the Denver CO nonattainment area from Moderate to Serious. EPA proposed to approve the July 1994 and September 1995 SIP submissions and to reclassify the Denver area to Serious in the Federal Register on July 9, 1996. EPA published a supplemental proposal to approve the December 22, 1995 SIP submission shortening the oxygenated fuels program period and to approve the Denver and Longmont CO SIPs based on the shortened period on December 6, 1996. The rationale for the final approvals and reclassification are set forth in this document. Additional information is available at the address indicated below.

EFFECTIVE DATE: This action is effective on April 9, 1997.

ADDRESSES: Copies of the State's submittals and other information are available for inspection during normal business hours at the following locations: Environmental Protection Agency, Region VIII, Air Programs, 999 18th Street, 3rd Floor, South Terrace, Denver, Colorado 80202–2466; and Colorado Air Pollution Control Division, 4300 Cherry Creek Dr. South, Denver, Colorado 80222–1530.

FOR FURTHER INFORMATION CONTACT: Jeff Houk at (303) 312–6446.

SUPPLEMENTARY INFORMATION:

I. Background

The air quality planning requirements for CO nonattainment areas are set out in sections 186–187 of the Clean Air Act (Act) Amendments of 1990 (CAAA) which pertain to the classification of CO nonattainment areas and to the submission requirements of the SIPs for these areas, respectively. The EPA has issued a ''General Preamble'' describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under Title I of the Act, [see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)]. Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of Title I advanced in today's rulemaking action. In today's action on the Denver and Longmont CO SIPs, EPA is applying its interpretations taking into consideration the specific factual issues presented and comments received from the public.

This Federal Register document addresses several requirements of the 1990 CAAA which were required to be submitted no later than November 15, 1992, and which the State did not

submit by that date. These requirements include an attainment demonstration, contingency measures and, for Denver, a vehicle miles travelled forecasting and tracking program and transportation control measures. EPA made a formal finding that the State had failed to submit these SIP revisions in a letter to Governor Roy Romer dated January 15, 1993. This Federal Register document also addresses revisions to Regulations 11 and 13, submitted by the State of Colorado to implement portions of the control strategy relied upon by the attainment demonstration.

Section 187(a)(7) required those States containing CO nonattainment areas with design values greater than 12.7 parts per million (ppm) to submit, among other things, an attainment demonstration by November 15, 1992, demonstrating that the plan will provide for attainment by December 31, 1995 for Moderate CO nonattainment areas and December 31, 2000 for Serious CO nonattainment areas. The attainment demonstration must include a SIP control strategy, which is also due by November 15, 1992. The SIP control strategy for a given nonattainment area must be designed to ensure that the area meets the specific annual emissions reductions necessary for reaching attainment by the deadline. In addition, section 187(a)(3) requires these areas to implement contingency measures if any estimate of actual vehicle miles travelled (VMT) or any updated VMT forecast for the area contained in an annual report for any year prior to attainment exceeds the number predicted in the most recent VMT forecast. Contingency measures are also triggered by failure to attain the NAAQS for CO by the attainment deadline. Contingency measures must be submitted with the CO SIP by November 15, 1992. Finally, a vehicle miles travelled forecasting and tracking program is required by Section 187(a)(2)(A), and transportation control measures are required for Denver by Section 187(a)(2)(B). These requirements are discussed in more detail in EPA's July 9, 1996 (61 FR 36004) and December 6, 1996 (61 FR 64647) Federal Register documents proposing action on the SIP revisions.

Longmont had been designated as unclassifiable/attainment prior to passage of the 1990 CAAA. However, a special monitoring study in 1988–89 recorded an exceedance of the NAAQS in Longmont. As a result, EPA Region VIII recommended that the Governor designate this area nonattainment, and on March 15, 1991, the Governor submitted a nonattainment designation for this area that was later codified by EPA at 40 CFR Part 81. Longmont was classified as a Moderate area in 40 CFR Part 81. Since this area had never had a SIP, EPA interpreted Section 172 of the Act to require an attainment demonstration for Longmont. Contingency measures under Section 172(c)(9) were also required. On January 15, 1993, EPA made a formal finding that the State had failed to submit these SIP revisions for Longmont.

On July 11, 1994 and July 13, 1994, Governor Roy Romer submitted comprehensive revisions to the Colorado SIP. The carbon monoxide SIP element submittals for Denver and Longmont addressed the outstanding CAAA requirements discussed above, as well as other CAAA mandates.

The State submitted revisions to Regulations 11 and 13 on September 29, 1995, to implement the I/M and oxygenated fuels program revisions committed to in the CO SIP. EPA proposed approval of these revisions in its July 9, 1996 Federal Register document, and is today taking final action to approve these revisions.

The State submitted additional revisions to Regulation 13 on December 22, 1995, shortening the effective period of the oxygenated fuels program. EPA published a Federal Register document on December 6, 1996, proposing approval of these revisions and re-proposing approval of the Denver and Longmont CO SIPs to provide an opportunity for public comment on the impact of this revision to Regulation 13 on the CO SIPs. EPA is today taking final action to approve the revisions to Regulation 13 that the State submitted on December 22, 1995.

II. Response to Public Comments

EPA received numerous comments on its proposed approval of the Denver CO SIP and the proposed reclassification of Denver from Moderate to Serious for CO. No comments were received specifically regarding the Longmont CO SIP. EPA received one set of comments regarding its proposed approval of the shortening of the effective period of the oxygenated fuels program. The comments and EPA's responses follow.

Extension of the Comment Period

Several parties requested that EPA extend its comment period on the proposed approval of the SIP to allow more time for the preparation and submission of comments. In response to these requests, EPA extended the comment period for an additional 30 days (see 61 FR 43501, August 23, 1996).

Legality of the SIP Submission Under State Law

Several parties commented that EPA should return the Denver CO SIP to the State without action, because it was submitted to EPA in conflict with the requirements of State law. These comments generally concern the nature of the Air Quality Control Commission's (AQCC's) submission of the SIP to Legislative Council for review, and the AQCC's and the Governor's response to Legislative Council's actions.

EPA's acceptance of the SIP through its July 14, 1994 determination of SIP completeness was based on the June 30, 1994 letter from the State Attorney General's Office submitted with the SIP. This letter certifies that the SIP was adopted and submitted in compliance with State law. Specifically, Section 25–7–133, C.R.S., required the submission of SIPs ''regarding the regulation of mobile sources'' to Legislative Council for review 45 days prior to submission to EPA. The CO SIP arguably did not fall within this criterion, as it did not include any regulatory content regarding mobile sources. Revisions to Regulations 11 and 13 (I/M and oxygenated fuels programs) to implement the provisions of the CO SIP were discussed in the SIP, but were not adopted or submitted with it. These revisions were adopted later in 1994 by the AQCC, received full Legislative Council review and were submitted to EPA in September 1995. Nevertheless, the AQCC chose to submit the CO SIP to Legislative Council for review even though it did not contain any mobile source regulation revisions.

The June 30, 1994 letter from the AG's office concedes that the SIP was not submitted to Legislative Council 45 days prior to submittal to EPA, but notes that the Council acted on the SIP at its June 21, 1994 meeting and, in effect, waived the 45 day requirement. Also, according to the June 30, 1994 letter, the actions by Legislative Council at its meeting were not fully in compliance with State law:

''The Council may act in one of two ways: it can return the SIP in its entirety and it is then deemed approved, or it can submit it to the General Assembly (via petition for special session if the General Assembly is not in session)* * * The Legislative Council, on June 21, 1994 took action by motion, wherein it voted to postpone review of the CO SIP submission, voted to return the plan for revisions by the Commission, and voted to conduct a final review no later than January 15, 1995. Pursuant to statute, because no special assembly was called by the

Council [the General Assembly was not in session], the SIP is deemed returned and approved.''

EPA finds the State Attorney General's Office's interpretation reasonable, and thus, EPA accepts that Office's conclusion that the SIP was, in fact, submitted to EPA for action in compliance with State law.

Oxygenated Fuels Program

Several comments were received with respect to the oxygenated fuels program. These comments and EPA's responses follow.

(1) The submission violates Section 25–7–105.1, C.R.S., which states that any regulation that is more stringent than Federal law shall not constitute part of a state implementation plan.

Putting aside for the purposes of this response the question of what EPA's role should be with respect to this State law, EPA does not believe that the 3.1% oxygenated fuels program is more stringent than is required under the Act. First, EPA does not believe section 211(c) of the Act preempts the State from requiring a 3.1% minimum oxygen content standard and, thus, does not believe a finding of necessity is required under section 211(c)(4)(C) of the Act (see discussion in response to comment 6 below). Second, the State is relying on the 3.1% oxygenated fuels program as one measure to help demonstrate attainment of the NAAQS for CO, as required by sections 110(a) and 187(a)(7) of the Act. Without the 3.1% oxygenated fuels program, the SIP would be unable to demonstrate attainment of the NAAQS. Thus, the 3.1% oxygenated fuels program is not more stringent than the Act requires.

(2) Subsequent to AQCC adoption of the CO SIP, the AQCC adopted revisions to Regulation 13 which shortened the control period during which the oxygenated fuels program is in effect. EPA's approval of the CO SIP does not address this revision.

Based on this comment, EPA reproposed approval of the Denver and Longmont CO SIPs, incorporating the shortened oxygenated gasoline season, and also proposed approval of the revisions to Regulation 13 shortening the season (see 61 FR 64647, December 6, 1996). EPA is now approving the shortening of the oxygenated gasoline season and is approving the Denver and Longmont CO SIPs based on the shortened season.

(3) EPA approval of the 3.1% oxygenated fuels program would be contrary to *Exxon Corp.* v. *City of New York,* 548 F.2d 1088 (2nd Cir. 1977).

The *Exxon* v. *City of New York* decision was based on pre-1990 CAA language, EPA regulations that have since been amended, and in part, different factual circumstances that bear no relevance to the situation here. Moreover, the changes in section 211(c)(4) and the 40 CFR Part 80 fuel regulations since the *Exxon* decision directly modify the provisions that the court relied on in a way that limits the scope of preemption of state fuel controls. Thus, this decision is not relevant to the current situation.

In *Exxon Corp.* v. *City of New York,* the court found that New York City's lead and volatility regulations were preempted under section 211(c)(4). In the Part 80 regulations, EPA had set out the federal fuel requirements and stated that they prescribed regulations for the control and/or prohibition of fuels and additives. EPA also had promulgated specific lead regulations, less stringent than the New York City regulations, but did not address volatility. At the time of the court's decision, section 211(c)(4) preempted ''any control or prohibition respecting use of a fuel or fuel additive.'' The court found that EPA had promulgated regulations respecting the use of fuels, and thus, New York City's more stringent regulations were preempted.

In the 1990 CAAA, Congress amended the language of section 211(c)(4) to preempt ''any control or prohibition respecting any characteristic or component of a fuel or fuel additive.'' After the court's decision, EPA also modified the Part 80 regulations to make it clear that they are not intended to preempt states' ability to regulate fuels and fuel additives that EPA has not addressed. Section 80.1(b) states: ''Nothing in this part is intended to preempt the ability of State or local governments to control or prohibit any fuel or additive for use in motor vehicles and motor vehicle engines which is not explicitly regulated by this part.'' Thus, both Congress and the Agency have clearly indicated that EPA's fuel requirements do not preempt states from regulating a specific characteristic or component that the Agency has not addressed. As discussed below, there are no federal regulations applicable to oxygen content in the Denver area, and hence *Exxon* v. *City of New York* is not applicable here.

(4) EPA approval of the 3.1% oxygenated fuels program could lead to oxygenate shortages which could interfere with the federal reformulated gasoline program.

During the two winter seasons since the CO SIP was submitted to EPA, the average oxygen content in Denver has been well above 3.1%. The federal reformulated gasoline program took effect on January 1, 1995, and thus has been in effect coincident with the Denver oxygenated fuels program for over two years. No documented oxygenate shortages have occurred as a result of Denver's program. Furthermore, the commentor did not provide any indication that a change in circumstances may occur that could produce any problems in the future.

(5) EPA approval of the 3.1% oxygenated fuels program could lead to an increase in NO_X emissions, which could jeopardize public health by increasing ozone concentrations.

Several parties have contacted EPA in the past with regard to potential NO_X increases from use of oxygenated fuels. No good scientific information exists that conclusively documents an increase in fleet NO_X emissions from use of oxygenated fuels. The laboratory studies to date have generally had poor control of other fuel characteristics that affect NO_X emissions, making the results unreliable.

Increases in NO_X emissions from the use of oxygenates would not be expected to generate exceedances of the ozone NAAQS, as asserted by the commentor. Oxygenate use is only required during the winter season, when climatic conditions are not favorable to the formation of tropospheric (ground-level) ozone. No exceedances of the ozone NAAQS have occurred at any time during the ten winter seasons in which oxygenated fuels have been used in the Denver area.

(6) The 3.1% oxygen content is higher than is necessary to attain the CO NAAQS, and other reasonable, practicable means of attainment are available, so EPA cannot approve this program under section 211(c)(4)(C) of the CAA. Moreover, section 211(m) provisions occupy the field for regulation of oxygen content of gasoline and thereby preempt any different regulation by a state.

Section 211(c)(4)(C) provides that states are preempted from regulating motor vehicle fuels where EPA has already acted, either to regulate the fuel or to find that no regulation is necessary. If preemption applies, the state may regulate the fuel only if EPA finds the state requirement necessary to achieve the NAAQS for the relevant pollutant. Here, EPA has neither regulated fuel oxygen content in Colorado nor made a finding that no such regulation is necessary. Therefore, the state regulation is not preempted and there is no need to find necessity. In the absence of federal preemption, states are free to regulate to control air pollution, and EPA must approve lawful state requirements into SIPs, as long as

the state submission meets all applicable requirements under Title I of the Act.

Section 211(c)(4)(A) preempts a state from ''prescrib[ing] or attempt[ing] to enforce * * * any control or prohibition respecting any characteristic or component of a fuel or fuel additive'' under two circumstances. Section 211(c)(4)(A)(i) provides for preemption if EPA has found that no control or prohibition of the characteristic is necessary and has published that finding in the Federal Register. Section 211(c)(4)(A)(ii) provides that a state is preempted from regulating if EPA has prescribed under section 211(c)(1) a control or prohibition applicable to such characteristic or component, unless the state control or prohibition is identical to EPA's control or prohibition. Thus, to preempt state regulation under 211(c)(4), either EPA must publish a finding that a control is unnecessary, or EPA must promulgate a control of the same characteristic or component under section 211(c)(1).

EPA has not made any finding under section 211(c)(4)(A)(i) that control of fuel oxygen content is unnecessary. There is no preemption of the Regulation 13 requirement for a 3.1% oxygen content under this provision.

The only requirement that EPA has promulgated applicable to fuel oxygen content under 211(c)(1) is in the reformulated gasoline (RFG) regulations. EPA promulgated the RFG regulations under both sections 211(c)(1) and 211(k). However, Colorado is neither required to use RFG by statute, nor has it voluntarily opted into the RFG program. Thus, the RFG regulations do not apply in Colorado.

The statute is ambiguous as to whether federal regulation of a fuel characteristic in certain areas of the country preempts state regulation only in those areas, or whether it preempts any state regulation of that characteristic nationwide. The statute simply refers to ''a control or prohibition applicable to such characteristic or component.'' The language does not indicate whether it means any control in any area or at any time generally applicable to a fuel characteristic, or a control actually applicable to a fuel characteristic in a given time and place. The statute is also ambiguous as to whether ''characteristic or component of a fuel or fuel additive'' should be read generally, as in ''oxygen content,'' or specifically, as in ''oxygen content in RFG areas.'' In delegating authority to the Agency to administer section 211(c), Congress has also implicitly delegated the authority to reasonably interpret the provision in light of any ambiguity. *Chevron, USA* v. *NRDC*, 467 U.S. 837 (1984).

EPA believes that the better reading of the statute is that preemption by the RFG regulations applies more narrowly, only in the areas where the federal RFG regulation applies. First, the RFG regulations arguably are not a control ''applicable'' to fuel oxygen content outside of RFG areas. Secondly, this interpretation is consistent with the judicial cannon of statutory construction by which courts construe preemption narrowly. Thirdly, as a policy matter, EPA's decision to regulate fuel oxygen content in RFG areas did not encompass a determination that states should not or need not regulate that characteristic outside of those areas. Section 211(c)(4) applies only where EPA has affirmatively decided to regulate a particular fuel characteristic or component, or has affirmatively found that no such regulation is necessary and has published such a finding in the Federal Register. The RFG rulemaking never considered whether fuel oxygen content requirements were needed for CO control outside RFG areas, but merely incorporated the statutory requirement to set a 2.0 percent oxygen content for RFG. Moreover, whether RFG applies to an area depends solely on its status as an ozone nonattainment area; its status for CO is irrelevant. This further reinforces the conclusion that oxygen content requirements under RFG do not represent any EPA or Congressional decision on the need for such requirements outside of RFG areas. Finally, the purpose of the section 211(c)(4) preemption provision is to strike an appropriate balance between states' ability to freely adopt control measures, and avoidance of a variety of different state standards, potentially disrupting the national motor vehicle fuel market and federal regulation of such fuels. This purpose is not served by applying preemption where there is no federal regulatory scheme, as here in Colorado.

Finally, section 211(m) does not constitute federal regulation of oxygen content, which could occupy the field for regulation of oxygen content and hence preempt state regulation. Section 211(m) requires states with certain CO nonattainment areas to submit a SIP revision requiring gasoline ''to contain not less than 2.7 percent oxygen content by weight.'' The statute requires state regulation, not federal, and explicitly sets a minimum standard for such state regulation, leaving the state free to adopt more stringent requirements if it so chooses. There is no indication in the statute or the legislative history that by specifying a minimum oxygen level that states should require, Congress intended the federal government to occupy the field of oxygen content regulation and preempt states from establishing a more stringent standard.

Because the federal RFG fuel oxygen content provision does not apply to Colorado, section 211(c)(4) does not preempt the state from promulgating its own average fuel oxygen content standard of 3.1%. Nor does section 211(m) explicitly or implicitly impose such a restriction. Moreover, EPA must approve into a SIP any lawful provision concerning control of a criteria pollutant that is submitted by a State and that otherwise meets the requirements of section 110. *See Union Electric Co.* v. *EPA*, 427 U.S. 246 (1976). Thus, Colorado was free to adopt a 3.1% oxygen content standard as a control strategy to help attain the CO NAAQS.

(7) EPA approval of the 3.1% oxygenated fuels program in Colorado would be a *de facto* mandate that at least 50% of the gasoline in the Denver area contain ethanol, contrary to *American Petroleum Institute* vs. *United States Environmental Protection Agency*, 52 F.3d 1113 (D.C. Cir. 1995).

In *API* v. *EPA*, the issue was whether EPA has the authority to mandate use of a particular oxygenate in RFG. The court held that EPA does not have such authority because § 211(k) lays out the specific criteria that EPA is to consider in promulgating the RFG requirements, and the ethanol mandate was not established pursuant to those criteria. This holding has no relevance for whether a state, rather than EPA, could directly mandate use of a particular oxygenate. Moreover, the state here has not mandated use of any particular oxygenate. It has merely established oxygen content requirements, and the industry may use any oxygenate capable of meeting those requirements, subject to the maximum blending restrictions. In addition, these are the same oxygen content requirements as the CAA mandates for certain areas, which indicates that Congress contemplated that such higher oxygen content levels may be needed in some areas. In the absence of federal preemption, states are free to adopt fuel controls for emission reductions. *API* identifies no additional limit on EPA's authority to approve such state requirements in SIPs.

(8) Recent studies have demonstrated that oxygenated fuels have little or no effect on CO air quality. EPA should facilitate an independent review of the impacts of oxygenated fuels on CO air quality before acting to approve the CO SIP.

The White House Office of Science and Technology Policy (OSTP) has recently issued a draft report on oxygenated fuels, which compiles the results of a number of other studies (''Interagency Assessment of Oxygenated Fuels,'' September 1996). While not yet final, the draft report concludes that oxygenated fuels produce approximately a 10.0% to 13.5% ambient CO reduction benefit. The National Academy of Sciences (NAS) has also issued a recent report commenting on the OSTP report. The NAS report found that oxygenated fuels programs have a benefit of zero to 10 percent in reducing ambient CO. Of the 10 existing ''real world'' studies of oxygenated fuels' ambient air impacts cited in the NAS report, eight show a statistically significant benefit from the program, and two studies (both in North Carolina) showed no significant benefit or did not attempt to quantify a benefit. Likewise, virtually all laboratory studies of oxygenated fuels, including some conducted by the automotive and petroleum industries, show a significant carbon monoxide reduction at the tailpipe from use of these fuels.

EPA recently conducted an analysis of carbon monoxide air quality data from cities around the country (''Impact of the Oxyfuel Program on Ambient CO Levels,'' J. Richard Cook et al, EPA420–R–96–002). In this report, EPA compared data from a number of cities which used oxygenated fuels beginning in the winter of 1992–93 to data from several cities which did not. Using this approach, EPA found an immediate and sustained reduction of carbon monoxide concentrations in the range of 3.1% to 13.6% in cities using oxygenated fuels, in excess of the reductions expected from new cars entering the fleet. This reduction was not seen in cities not using oxygenated fuels. This level of benefit is consistent with that found in other studies. A subsequent regression modeling analysis by Dr. Gary Whitten of SAI of ambient CO data in oxygenated fuels areas (''Regression Modeling of Oxyfuel Effects on Ambient CO Concentrations,'' SYSAPP–96/78, January 8, 1997) found a 14% reduction in ambient CO concentrations due to implementation of the program.

These analyses are significant because they are based on measurements of actual air quality data in these cities over at least two winter periods. Many interested parties have criticized laboratory studies as not being representative of the real world; however, in attempting to carry out a ''real world'' study in a single urban area, it is very difficult to separate the influence of oxygenated fuels from all of the other factors that affect carbon monoxide concentrations (including weather, congestion, and changes in the mix of cars and trucks in the fleet).

The National Academy of Science's report points out some areas where additional research would be useful, and EPA and the State are working to design a study to address some of the uncertainties surrounding the use of oxygenated fuels. However, the NAS report and the available scientific data support continuing the oxygenated fuels program.

While not a factor in EPA's decision, readers may be interested to know that oxygenated fuels is one of the least expensive carbon monoxide control strategies available. In terms of dollars per ton of pollution eliminated, it is much cheaper than other alternatives, such as transportation control measures, mandatory employee trip reduction, conversion of vehicles to run on alternative fuels like propane or natural gas, or industrial controls. The program also serves as an important defense against factors that increase carbon monoxide emissions in the Denver area, including growth in daily vehicle miles travelled, growth in the amount of time that vehicles spend in congestion, and growth in the number of sport utility vehicles and other types of higher-emitting light-duty trucks on the road. EPA has substantial evidence at this time that oxygenated fuels are an effective means to control carbon monoxide, and hence it is appropriate to approve this provision of the CO SIP at this time.

Shortening of the Oxygenated Fuels Season

One party submitted comments in response to EPA's December 6, 1996 supplemental notice of proposed rulemaking, proposing approval of the revisions to Regulation 13 removing the last two weeks of the oxygenated fuels season and reproposing approval of the CO SIPs to incorporate this revision. This commentor supported EPA's action to approve the shortening of the oxygenated fuels season. The commentor also raised other issues with respect to the oxygenated fuels program which have been addressed above.

Abandoned and Impounded Vehicle Program

One commentor expressed concern that the SIP provision preventing re-registration of abandoned or impounded pre-1982 vehicles would negatively impact the collector car industry of the Denver region and would prevent owners from recovering stolen vehicles. Another commentor expressed concern that this program would unnecessarily harm lower-income individuals and artificially increase demand for new cars. While EPA understands these concerns, the Act prohibits EPA from basing its actions concerning SIPs on considerations involving the economic reasonableness of State actions. *See Union Electric Co.* v. *EPA*, 427 U.S. 246, 256–266 (1976); 42 U.S.C. section 7410(a)(2).

While EPA is prohibited from basing its action on the SIP on economic grounds, EPA has concluded for other reasons that it should not act on this element of the SIP. The provision is not well-defined in the SIP, with the design and implementation of this program left up to the discretion of local jurisdictions, and no credit was taken for this measure in the attainment demonstration (see SIP page IX–4). Therefore, EPA is not taking action on this element of the SIP.

Revised Emissions Standards for Pre-1982 Vehicles

One commentor stated that the requirement for tighter emissions testing cutpoints for pre-1982 was arbitrary and capricious, and unduly impacted owners of these model year vehicles in the Denver region. Again, EPA is prohibited by law from basing its actions on SIPs on considerations involving the economic reasonableness of State actions. However, pre-1982 vehicles were targeted for tighter cutpoints because 1982 and newer vehicles are already subject to the more stringent provisions of the enhanced vehicle inspection and maintenance program. Tighter cutpoints for pre-1982 vehicles should result in more high-emitting vehicles being identified and repaired through the requirements of Regulation 11. Data from the enhanced I/M program show that the average older vehicle emits carbon monoxide at levels many times higher than the level at which they were certified for sale. However, there is no presumption that all older vehicles are high emitters, and vehicles in good operating condition should not fail the tighter cutpoints.

This commentor also stated that the State and EPA had failed to consider the smaller proportion of total VMT generated by pre-1982 vehicles. The mobile source emissions modeling conducted for the SIP is based on estimates of annual mileage accumulation and share of daily VMT for each model year. Thus, the SIP modeling inputs reflect the smaller proportion of total VMT generated by pre-1982 vehicles. While it is true that pre-1982 vehicles do represent a relatively small proportion of total

regional VMT, emissions generated by these vehicles are still significant because these vehicles are required to meet less stringent emissions standards by the State and EPA, and thus, per-vehicle emissions are higher. The SIP estimates that this measure would provide a CO emission reduction benefit of 20 tons per day in 1995. EPA believes the estimates of pre-1982 VMT share and emissions reductions from the SIP provision are reasonable.

Another commentor stated that EPA should give the State the option of eliminating the I/M program and the prohibition on re-registration of abandoned and impounded vehicles in favor of an enforceable system of user fees or other economic incentives that would address the actual contribution of individual vehicles and drivers to the region's pollution problems. The Clean Air Act requires the State to implement an enhanced I/M program that meets certain minimum requirements. However, the Act would allow the State to revise its SIP at any time to add the type of program mentioned by the commentor, as long as the program meets the SIP requirements of Section 110. EPA does not have to take any type of action in order to enable the State to develop and submit this type of SIP revision. As noted above, EPA is not acting on the SIP provision that prohibits re-registration of abandoned and impounded vehicles.

Transportation Control Measures (TCMs)

One commentor felt that EPA's description of the relationship of the TCMs to the SIP as a whole was unclear. This commentor felt that EPA was interpreting the SIP to incorporate the TCMs as part of the attainment demonstration, in addition to incorporating the TCMs as contingency measures.

Further review of the SIP confirms that the TCMs are only meant to be incorporated as contingency measures. This intent is clearly stated in the SIP on pages VI–3 and X–1. The SIP states the intent of the area to implement the contingency measures early, as allowed by EPA policy, to obtain additional emission reductions. Chapter XII of the SIP, Attainment Demonstration, clearly demonstrates that these measures are not necessary for the Denver area to attain the CO NAAQS by December 31, 2000. Thus, EPA is clarifying that the TCMs are intended to be enforceable provisions of the SIP only as contingency measures, with implementation required only in the event that the contingency measures are triggered (through the mechanisms discussed in the proposal). The State has made an adequate showing that TCMs are not needed for attainment, as required by section 187(a)(2)(B) of the Act.

Another commentor stated that the requirements of the Act for TCMs in Denver had not been met. EPA believes that the State and the Regional Air Quality Council have correctly interpreted the Act's requirements for TCMs, that the TCM provisions of the SIP are adequate, and that the SIP contains an adequate showing that TCMs are not necessary for attainment.

This commentor also stated that EPA should require annual reporting on the effectiveness and implementation of TCMs and other control strategies. EPA notes that periodic reporting is already required for a number of control measures and does not believe that further reporting is necessary at this time. For example, the Act requires annual reporting of VMT and a comparison of actual VMT with the SIP forecasts. The State has complied with these requirements. The Act and EPA's transportation conformity rule (58 FR 62188, November 24, 1993) also require that the Denver Regional Council of Governments (DRCOG) report on the implementation status of TCMs each time a conformity determination is made, and prohibit conformity findings if TCMs are not being implemented as required by the SIP. The State also produces annual reports on the effectiveness of the SIP's two major control strategies, the I/M and oxygenated fuels programs, as required by State law. EPA's I/M regulations (40 CFR Part 51, Subpart S) also require periodic evaluation of and reporting on the effectiveness of the I/M program.

Contingency Measures

One commentor stated that the SIP does not contain adequate contingency measures, and that EPA should require the State to implement the contingency measures based on the Denver area's failure to attain. This commentor also stated that it was insufficient for the SIP to describe existing conditions as contingency measures which have already been implemented.

As discussed in the proposal (61 FR 36009, July 9, 1996), the SIP TCMs exceed the minimum emission reductions established in EPA guidance, and EPA considers these measures adequate. Although the State has chosen to voluntarily implement many of the contingency measures, and thus obtain the benefits of early emissions reductions, the commentor is correct that EPA is not requiring the State to implement the contingency measures in the SIP based on the area's failure to attain the standard by the end of 1995. EPA believes it is neither necessary nor appropriate to do so. This is because EPA's approval of this Serious area CO SIP, which the State has been implementing since 1994, obviates the need for Moderate area contingency measures. Contingency measures for a Moderate CO nonattainment area with a design value greater than 12.7 ppm are intended to provide emissions reductions while the State revises its SIP to meet Serious area SIP requirements. Here the State has already submitted a Serious area SIP that demonstrates attainment of the CO standard by the end of 2000, and EPA is approving it.

In addition, there is no EPA-approved Moderate area CO SIP for the Denver area on which EPA can base a requirement that the State implement contingency measures for the failure to attain the CO standard by the end of 1995. If an EPA-approved Moderate area CO SIP had been in place at the time the area violated the CO standard in 1995, EPA would have required the State to implement the contingency measures contained in that SIP. In the Serious area SIP that the State has submitted and that EPA is approving today, contingency measures are tied to the 2000 attainment date. There is no basis or necessity for EPA to require the State to implement contingency measures based on the area's failure to attain the CO standard by the end of 1995.

The SIP envisions that the TCMs identified as contingency measures will be implemented early. This is acceptable to EPA. EPA policy (August 13, 1993 memorandum from G.T. Helms to regional Air Branch Chiefs entitled ''Early Implementation of Contingency Measures for Ozone and Carbon Monoxide Nonattainment Areas'') encourages the early implementation of contingency measures for the additional emission reductions and progress toward attainment that they provide. EPA believes that requiring states to adopt additional contingency measures to replace measures that were implemented early would only discourage early implementation and the resulting additional emission reductions.

Reclassification to Serious

Two commentors expressed concern over EPA's proposed reclassification of the Denver area from Moderate to Serious for CO, given the small number and low absolute value of violations in recent years. These commentors felt that EPA should recognize Denver's progress toward attainment of the CO NAAQS in

recent years. EPA recognizes that Denver has taken significant steps to reduce CO levels and make progress toward attainment, including implementation of a comprehensive woodburning control program, the nation's first oxygenated fuels program, and an effective enhanced I/M program. However, as explained in the proposed rulemaking, the unambiguous provisions of the CAA and recent ambient values for CO in Denver compel EPA to take this action.

One commentor stated that the SIP does not contain the elements required for a Serious area SIP. As discussed in detail in the proposal, EPA believes that the SIP does contain all required elements.

Attainment Demonstration

One commentor submitted extensive comments on the adequacy of the attainment demonstration. This commentor felt that the attainment demonstration was inadequate because it did not consider other downtown intersections with the potential of experiencing high concentrations of CO and because growth projections used in the modeling underestimate the amount of growth in traffic that has occurred in the Denver area since the attainment demonstration was submitted to EPA.

The State performed preliminary CAL3QHC modeling of CO concentrations at three intersections in the downtown area: Speer and Auraria Boulevard, Broadway and Colfax, and Broadway and Champa. The CAMP air quality/meteorology monitoring station, which has historically recorded the highest levels of CO in the Denver area, is located adjacent to the intersection of Broadway and Champa. The preliminary modeling results showed predicted concentrations at the Speer/Auraria and Broadway/Colfax intersections that were up to 6 parts per million (ppm) higher than concentrations predicted at the CAMP intersection. However, the State selected only Broadway and Champa (CAMP) for use in the SIP attainment demonstration because the on-site air quality and meteorological data available at this location provided more confidence in the modeling results. To ensure that higher concentrations exceeding the NAAQS do not occur at other downtown locations the State has performed supplemental CO monitoring studies at all three intersections and elsewhere in the Denver urban core. The results to date have continued to support the use of CAMP as the maximum concentration downtown site; CAMP continues to record higher CO design value concentrations than any other location in the Denver metro monitoring network.

The commentor stated that EPA has not applied its modeling standards, guidance, and protocols consistently to the choice of intersections or to the attainment demonstration generally. EPA (both Region VIII and the national Model Clearinghouse) reviewed the State's analysis and found that it was consistent with national modeling policy and other recent Urban Airshed Model/CAL3QHC modeling applications. EPA believes that modeled concentrations at Speer/Auraria and Broadway/Colfax are unreliable and therefore is not requiring the State to use the preliminary CAL3QHC intersection modeling results to demonstrate attainment at these two intersections. EPA's position is based on the following factors: (1) Saturation CO monitoring studies in the downtown area and continuous wintertime monitoring since 1994 at Speer/Auraria do not support the modeled predictions of higher concentrations at these locations; (2) estimated wind speeds at Speer/Auraria and Broadway/Colfax during both episodes modeled were frequently below the stated threshold of the CAL3QHC model and are not considered valid for use in the model; (3) there is a possibility that ''cold start'' vehicle emissions may have been overestimated at these intersections, artificially increasing predicted concentrations; and (4) micro-meteorological effects of high-rise office buildings significantly increase modeling uncertainties at these intersections, where on-site meteorological data was not available.

EPA also notes that the State followed the criteria contained in the Guideline for Modeling Carbon Monoxide from Roadway Intersections (EPA–454/R–92–005) in identifying the six busiest intersections for the SIP analysis. State modeling of these intersections showed compliance with the NAAQS. However, these intersections are all located outside of the downtown area; downtown is where the highest concentrations have historically been measured. EPA subsequently requested the State to model an additional intersection in the downtown urban core in order to assure attainment of the NAAQS. However, the State's compliance with this request goes beyond the usual requirements for a CO SIP attainment demonstration analysis.

The commentor suggested that meteorological and other data are available that are more than adequate for modeling intersections other than CAMP. To EPA's knowledge, CAMP is the only intersection with representative on-site meteorology data for the periods that were modeled. Off-site meteorology was available at the Tivoli site for portions of the SIP episodes modeled, but this site is located several hundred meters south of the current intersection of Speer and Auraria. EPA reviewed the Tivoli site and determined that meteorological data collected at this location would not be representative of conditions at the intersection. Winds at the Speer and Auraria intersection would be affected to a far greater degree by building wake effects than the Tivoli site. In addition, there have been extensive changes to the roadway and construction of additional structures in the area since the Tivoli data were obtained in 1988. No data whatsoever were available for the Broadway and Colfax intersection.

The commentor referred to critiques of the attainment demonstration developed by State staff and by outside sources. EPA has not been provided with and is not aware of any State or outside critiques of the attainment demonstration. EPA was provided with preliminary modeling results for the Speer and Auraria and Broadway and Colfax intersections by APCD staff members that were based on the Tivoli and CAMP meteorological/air quality data. In addition to using non-representative data, the analysis contained a number of modeling assumptions that were not consistent with the EPA Guideline on Air Quality Models or the CAL3QHC Model Users Manual, including incorrect atmospheric stabilities and wind speeds lower than the acceptable threshold for the CAL3QHC model. The final CAL3QHC modeling submitted by the APCD did not contain intersection modeling for the two intersections where on-site data were not available. EPA concurs with the final modeling analysis submitted by the State. This decision is supported by the supplemental CO monitoring studies that have been performed in the downtown area. These studies support the continued use of CAMP as the maximum concentration downtown site.

The commentor also suggested that EPA applied a different set of review criteria to the downtown intersections than to suburban sites, because the downtown intersections showed high CO concentrations that would trigger more stringent control strategies, and suggested that these different criteria led to high concentration intersections downtown being dropped from the SIP analysis. The reason the modeling results for the two intersections in the downtown area were dropped is that the CAL3QHC model could not be applied

appropriately given the effects of nearby downtown buildings on wind flow and the lack of representative on-site data. Building effects were not an issue at the six suburban intersections modeled in the SIP.

The commentor implied that EPA was basing its decision to approve the SIP on ''voluntary'' compliance with EPA requests, ''understandings'' between State and EPA staff, and written and unwritten EPA ''guidance''. The commentor suggested that EPA was honoring a ''deal'' that violates the letter and intent of the Act. EPA believes that the attainment demonstration meets the requirements of the Act. EPA addresses the commentor's specific concerns regarding the attainment demonstration in other portions of this response. EPA is not basing its decision to approve the SIP on any ''deals'' or improper ''understandings'' reached with the State, but on the SIP's compliance with the Act. EPA does not know what the commentor is referring to when it writes about ''voluntary'' compliance with EPA requests. To the extent EPA has offered guidance to the State, EPA believes such guidance has been consistent with the Act or a reasonable interpretation of the Act.

The commentor noted that many large projects have been planned or built since the attainment demonstration was submitted to EPA, and that newer growth projections show higher levels of traffic than those considered in the SIP. Two of the facilities specifically mentioned by the commentor (Coors Field and Elitch's) would not be expected to affect Denver's ability to attain the CO standard, since they are not operational during the winter season when the highest values of CO are measured in Denver. The proposed Pepsi Center, which could impact Denver's ability to attain the NAAQS due to its potential proximity to one of the downtown intersections where elevated values of CO have been monitored, has not been approved by the City and County of Denver, and there is apparently some possibility that this facility may not be located downtown at all. Denver is currently examining the traffic and air quality impacts of a wide range of potential development in the lower downtown area through its Central Platte Valley Multimodal Access and Air Quality Study.

The comment regarding newer projections of traffic growth apparently refers to revised estimates of daily vehicle miles travelled produced by DRCOG in the summer and fall of 1996. In early 1996, DRCOG made some improvements to its transportation demand model (used for transportation planning, and to produce estimates of future VMT and speeds for air quality planning purposes) and validated the model with actual 1995 traffic counts recorded in Denver. These adjustments led to revised estimates of approximately 49 million miles per day of traffic in the Denver area (the previous modeled estimate had been approximately 45 million miles per day). Part of this estimated increase is due to actual growth in traffic in the Denver region, and part of it is due to use of improved methodologies for traffic counting in the region.

In November 1996, Colorado submitted its 1996 report of 1995 actual annual VMT, as required by the SIP's VMT tracking provisions and the Act. This report showed that actual 1995 VMT were 4.4% greater than the SIP projections and 1.3% greater than the most recent revised projection for 1995. These exceedances are within the allowable limits of EPA's VMT Tracking Program guidance (5.0% and 3.0% for the respective VMT projections). EPA established these tolerances in recognition of the uncertainty inherent in attempting to measure actual VMT in a large urban area. Since the most recent reported actual annual VMT is within these allowable tolerances, the State is not required to implement its contingency measures, and no revision to the SIP is required. If a subsequent VMT tracking report shows that the SIP VMT projections (or updated forecasts) are exceeded by greater than the margins of error allowed by EPA guidance, implementation of the contingency measures will be required, along with a revision to the SIP if necessary.

EPA believes that the State has followed the proper procedures (as outlined in EPA's guidance and the SIP's VMT Tracking Program protocol) in generating the annual VMT reports that EPA is relying on for its approval of the SIP. Several factors are involved in comparing estimates of daily VMT to estimates of annual VMT, including: (1) The geographic area covered by the different estimates; (2) whether average daily traffic or average weekday traffic are used; (3) the differences between the traffic counting network used by DRCOG for its model validation, and the network required for use by the Colorado Department of Transportation in generating the Highway Performance Monitoring System (HPMS) VMT data that the VMT Tracking Program traffic estimates are based on (use of HPMS data is required by EPA and U.S. Department of Transportation guidance); and (4) the assumptions behind the original VMT estimates in the SIP.

There are a number of other factors that protect the SIP's attainment demonstration from growth in VMT. First, under the requirements of the EPA/DOT transportation conformity rule, DRCOG's transportation plans and transportation improvement programs must comply with the emissions budget for CO contained in the CO SIP, even if unexpected increases in VMT occur after the SIP is adopted. This budget protects the Denver area against future violations of the CO NAAQS in the face of growing VMT. If the budget cannot be met, DRCOG cannot adopt any new plans and TIPs, and no new regionally significant projects can be approved. Thus, failure to meet the budget has the same or greater effect as the imposition of highway sanctions under section 179 of the Act. Second, it is important to note that virtually all of the growth in the metro area has occurred not in the downtown area, where the violations of the NAAQS have been monitored, but in outlying portions of the metro area. Thus, EPA would expect that VMT in the downtown area would increase at a lower rate than VMT for the metro area as a whole. This is supported by traffic counts at locations near downtown, which show that traffic in the central area increased at a rate of approximately 2–3% per year between 1990 and 1995, even though DRCOG estimates that traffic has increased approximately 4.5% per year regionwide. Finally, the air quality trends information submitted with the State's March 1996 milestone report shows that the Denver area is ahead of schedule to attain the CO NAAQS even with the higher-than-expected estimates of daily VMT.

Based on its conclusion that the attainment demonstration was inadequate, this commentor further concluded that the control strategies submitted with the SIP are insufficient to provide for attainment of the NAAQS. EPA's general response to this assertion is that the attainment demonstration is adequate, and that the modeling summarized in Chapter XII of the SIP and submitted to EPA demonstrates that the SIP will provide for attainment with the control measures included in the SIP.

The commentor stated that the SIP does not include a requirement that gasoline sold during the winter months include a level of oxygen sufficient to attain the NAAQS. As discussed above, the SIP includes a requirement for a 3.1% minimum oxygen content; the attainment demonstration shows that this level of oxygen is necessary and

sufficient to provide for attainment of the NAAQS.

The commentor stated that there is no indication that the State will apply the requirements for content and analysis of transportation plans, programs and projects contained in the conformity regulations. These requirements for nonattainment areas classified as serious and above are enforceable through the EPA/DOT conformity regulation, and DRCOG must comply with them when they take effect. There is no requirement in the conformity rule or in the Act that these provisions be incorporated into the CO SIP. However, they are mentioned on page I–4 of the SIP.

The commentor stated that the SIP does not satisfy section 110(a)(2) of the Act. As outlined in detail in the Technical Support Document for EPA's proposed action, the SIP does satisfy the SIP content requirements of section 110(a)(2).

The commentor stated that the SIP does not contain adequate measures to control stationary source emissions. Stationary point source emissions represent only 1.1% of base case emissions (based on actual emissions) and 5.6% of attainment year emissions (based on allowable emissions). None of the major sources are located in close proximity to the downtown monitors which record high concentrations, and these sources have little or no impact on Denver's ability to attain the NAAQS. However, stationary point sources of CO are regulated by Colorado Regulation No. 1 (Particulates, Smokes, CO and Sulfur Oxides). As noted above, woodburning is already regulated by Regulation No. 4; woodburning also has very little impact on the downtown monitoring sites. The remaining stationary sources of emissions are natural gas combustion and structural fires, which contribute a total of less than 1% to the attainment year inventory and again have very little impact on the high concentration monitoring sites.

The commentor stated that the SIP should include a mandatory employer-based trip reduction program, or demonstrate that such a program is not necessary to demonstrate attainment of the NAAQS. As noted in the proposal, Congress revised the Act in 1995 to make submittal of trip reduction programs voluntary. Thus, EPA could not require the State to submit such a program even if the attainment demonstration were to be found inadequate.

The commentor noted that the SIP does not contain an adequate milestone, nor does it contain an economic incentive program for implementation should the milestone not be met. Neither the Act nor EPA policy establish requirements for milestones, so the State was free to adopt its 1995 base case emission inventory as the milestone. The base case represents progress toward attainment (emissions in the 1995 base case were substantially lower than 1990 emissions), which is the intent of this requirement of the Act. Also, the Act does not require submittal of an economic incentive program until after either (1) the milestone has been missed or (2) the Denver area fails to attain by December 31, 2000. Thus, the SIP is not deficient in this regard.

Finally, the commentor stated that EPA should expressly incorporate the baseline (pre-existing) control strategies in its approval of this SIP, that EPA should make it clear that its approval of the SIP is based on the understanding that these control strategies will remain in place, and that EPA should withdraw its approval of the SIP should these control strategies be weakened. As noted in the proposal, the baseline strategies relied upon in the attainment demonstration have already been incorporated into the Colorado SIP, making them federally enforceable; the new control strategies will also be incorporated into the SIP with EPA's final action on the SIP. EPA's approval is based on the enforceability of these measures and the SIP's stated intention that these measures continue to be implemented. If, subsequent to EPA approval, control measures are weakened or discontinued, EPA's available responses include making a finding of SIP non-implementation under section 179(a)(4) and/or section 113(a)(2) of the Act, or making a finding of SIP inadequacy and issuing a call for a SIP revision under Section 110(k)(5) of the Act. EPA believes that these mechanisms, along with EPA's and citizens' ability to directly enforce SIP requirements, are adequate to ensure that pre-existing control measures continue to be implemented.

Approval of the SIP

While several parties requested that EPA disapprove the SIP, for reasons discussed above, two commentors supported EPA's approval of the SIP. EPA is proceeding with final approval of the CO SIP for the reasons discussed above and in our July 9, 1996 and December 6, 1996 notices of proposed rulemaking.

III. Implications of Today's Final Action

In today's action, EPA is approving SIP revisions submitted by the Governor on July 11, 1994, July 13, 1994, September 29, 1995, and December 22, 1995. Specifically, EPA is (1) approving the July 11, 1994 attainment demonstration, VMT tracking and forecasting program, TCM, and contingency measures submittals for Denver; (2) approving the July 13, 1994 attainment demonstration and contingency measures submittals for Longmont; (3) approving the control strategies for Denver, including the September 29, 1995 submittal of revisions to Regulations 11 and 13 (I/M and oxygenated fuels); and (4) approving the further revisions to Regulation 13 submitted on December 22, 1995 that shorten the effective period of the oxygenated fuels program. For the reasons discussed in Section II of this document, EPA is not taking action on the SIP provision submitted on July 11, 1994 that calls for a prohibition of the re-registration of abandoned and impounded vehicles.

In this document, EPA is also making a finding that the Denver/Boulder carbon monoxide nonattainment area did not attain the NAAQS by the required attainment date of December 31, 1995, and is revising the area's classification for carbon monoxide in 40 CFR Part 81 from Moderate to Serious. This finding is based on air quality data revealing more than one exceedance of the CO NAAQS during calendar year 1995, resulting in a design value higher than the NAAQS for the period 1994–95. By action dated December 20, 1994, the EPA Administrator delegated to the Regional Administrators the authority to determine whether CO nonattainment areas attained the NAAQS, and to reclassify those that did not.

EPA has reviewed this request for revision of the federally-approved SIP for conformance with the provisions of the Act. EPA has determined that this action conforms with those requirements.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State Implementation Plan. Each request for revision to any State Implementation Plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Executive Order (EO) 12866

Under EO 12866, 58 FR 51735 (October 4, 1993), EPA is required to determine whether regulatory actions are significant and therefore should be subject to OMB review, economic analysis, and the requirements of the

EO. The EO defines a ''significant regulatory action'' as one that is likely to result in a rule that may (1) have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Today's SIP-related actions have been classified as Table 3 actions for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted these regulatory actions from EO 12866 review.

Likewise, EPA has determined that today's finding of failure to attain would result in none of the effects identified in section 3(f) of the EO. Under Section 186(b)(2) of the Clean Air Act, findings of failure to attain and reclassification of nonattainment areas are based upon air quality considerations and must occur by operation of law in light of certain air quality conditions. They do not, in and of themselves, impose any new requirements on any sectors of the economy. In addition, because the statutory requirements are clearly defined with respect to the differently classified areas, and because those requirements are automatically triggered by classifications that, in turn, are triggered by air quality values, findings of failure to attain and reclassification cannot be said to impose a materially adverse impact on State, local, or tribal governments or communities.

V. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. section 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. sections 603 and 604). Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisidiction over populations that are less than 50,000.

SIP revision approvals under Section 110 and Subchapter I, Part D, of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval process does not impose any new requirements, EPA certifies that this final rule would not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State actions. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. U.S.E.P.A., 427 U.S. 246, 256–266 (S. Ct. 1976); 42 U.S.C. section 7410(a)(2).

As discussed in section IV of this document, findings of failure to attain and reclassification of nonattainment areas under Section 186(b)(2) of the CAA do not, in and of themselves, create any new requirements. Therefore, I certify that today's final action does not have a significant impact on small entities.

VI. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that today's final approval actions do not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local or tribal governments in the aggregate, or to the private sector. These Federal actions approve pre-existing requirements under State or local law, and impose no new requirements. Accordingly, no additional costs to State, local or tribal governments, or to the private sector, result from these actions.

Likewise, EPA believes, as discussed in section IV of this document, that the finding of failure to attain and reclassification to Serious are factual determinations based upon air quality data and must occur by operation of law and, hence, do not impose any federal intergovernmental mandate, as defined in section 101 of the Unfunded Mandates Act.

VII. Small Business Regulatory Enforcement Fairness Act (SBREFA)

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

VIII. Petitions for Judicial Review

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 9, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see Section 307(b)(2)).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, and Reporting and recordkeeping requirements.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: January 31, 1997.

Max H. Dodson,

Acting Regional Administrator.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart G—Colorado

2. Section 52.320 is amended by adding paragraph (c)(80) to read as follows:

§ 52.320 Identification of plan.

* * * * *

(c) * * *

(80) On July 11, 1994, July 13, 1994, September 29, 1995, and December 22, 1995, the Governor of Colorado submitted revisions to the Colorado State Implementation Plan (SIP) to satisfy those CO nonattainment area SIP requirements for Denver and Longmont, Colorado due to be submitted by November 15, 1992, and further revisions to the SIP to shorten the effective period of the oxygenated fuels program. EPA is not taking action on the SIP provision submitted on July 11, 1994 that calls for a prohibition of the re-registration of abandoned and impounded vehicles.

(i) Incorporation by reference.

(A) Regulation No. 11, Motor Vehicle Emissions Inspection Program, 5 CCR 1001–13, as adopted on September 22, 1994, effective November 30, 1994. Regulation No. 13, Oxygenated Fuels Program, 5 CCR 1001–16, as adopted on October 19, 1995, effective December 20, 1995.

PART 81—[AMENDED]

1. The authority citation for Part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. In 81.306, the Carbon Monoxide table is amended by revising the entry for ''Denver-Boulder Area'' to read as follows:

§ 81.306 Colorado.

* * * * *

COLORADO—CARBON MONOXIDE

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
* * * *	*	*		*
Denver-Boulder Area:				
The boundaries for the Denver nonattainment area for carbon monoxide (CO) are described as follows: Start at Colorado Highway 52 where it intersects the eastern boundary of Boulder County; Follow Highway 52 west until it intersects Colorado Highway 119; Follow northern boundary of Boulder city limits west to the 6000-ft. elevation line; Follow the 6000-ft. elevation line south through Boulder and Jefferson Counties to US 6 in Jefferson County; Follow US 6 west to the Jefferson County-Clear Creek County line; Follow the Jefferson County western boundary south for approximately 16.25 miles; Follow a line east for approximately 3.75 miles to South Turkey Creek; Follow South Turkey Creek northeast for approximately 3.5 miles; Follow a line southeast for approximately 2.0 miles to the junction of South Deer Creek Road and South Deer Creek Canyon Road; Follow South Deer Creek Canyon Road northeast for approximately 3.75 miles; Follow a line southeast for approximately five miles to the northern-most boundary of Pike National Forest where it intersects the Jefferson County-Douglas County line; Follow the Pike National Forest boundary southeast through Douglas County to the Douglas County-El Paso County line; Follow the southern boundary on Douglas County east to the Elbert County line; Follow the eastern boundary of Douglas County north to the Arapahoe County line; Follow the southern boundary of Arapahoe County east to Kiowa Creek; Follow Kiowa Creek northeast through Arapahoe and Adams Counties to the Adams-Weld County line; Follow the northern boundary of Adams County west to the Boulder County line; Follow the eastern boundary of Boulder County north to Highway 52.				
Adams County (part)	.....	Nonattainment	4/9/97	Serious.
Arapahoe County (part)	.....	Nonattainment	4/9/97	Serious.
Boulder County (part)	.....	Nonattainment	4/9/97	Serious.
Denver County (part)	.....	Nonattainment	4/9/97	Serious.
Douglas County (part)	.....	Nonattainment	4/9/97	Serious.
Jefferson County (part)	.....	Nonattainment	4/9/97	Serious.

[1] This date is November 15, 1990, unless otherwise noted.

* * * * *

[FR Doc. 97–5765 Filed 3–7–97; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 82

[FRL–5701–1]

Protection of Stratospheric Ozone

AGENCY: Environmental Protection Agency.

ACTION: Notice of acceptability.

SUMMARY: This notice expands the list of acceptable substitutes for ozone-depleting substances (ODS) under the U.S. Environmental Protection Agency's (EPA) Significant New Alternatives Policy (SNAP) program.

EFFECTIVE DATE: March 10, 1997.

ADDRESSES: Information relevant to this notice is contained in Air Docket A–91–42, Central Docket Section, South Conference Room 4, U.S. Environmental Agency, 401 M Street, S.W., Washington, D.C. 20460. Telephone: (202) 260–7548. The docket may be inspected between 8:00 a.m. and 5:30 p.m. weekdays. As provided in 40 CFR part 2, a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: Sally Rand at (202) 233–9739 or fax (202) 233–9577, U.S. EPA, Stratospheric Protection Division, 401 M Street, S.W., Mail Code 6205J, Washington, D.C. 20460; EPA Stratospheric Ozone Protection Hotline at (800) 296–1996; EPA World Wide Web Site at http://

www.epa.gov/ozone/title6/snap/snap.html.

SUPPLEMENTARY INFORMATION:

I. Section 612 Program

A. Statutory Requirements

Section 612 of the Clean Air Act authorizes EPA to develop a program for evaluating alternatives to ozone-depleting substances. EPA refers to this program as the Significant New Alternatives Policy (SNAP) program. The major provisions of section 612 are:

Rulemaking—Section 612(c) requires EPA to promulgate rules making it unlawful to replace any class I (chlorofluorocarbon, halon, carbon tetrachloride, methyl chloroform, methyl bromide, and hydrobromofluorocarbon) or class II (hydrochlorofluorocarbon) substance with any substitute that the Administrator determines may present adverse effects to human health or the environment where the Administrator has identified an alternative that (1) reduces the overall risk to human health and the environment, and (2) is currently or potentially available.

Listing of Unacceptable/Acceptable Substitutes—Section 612(c) also requires EPA to publish a list of the substitutes unacceptable for specific uses. EPA must publish a corresponding list of acceptable alternatives for specific uses.

Petition Process—Section 612(d) grants the right to any person to petition EPA to add a substance to or delete a substance from the lists published in accordance with section 612(c). The Agency has 90 days to grant or deny a petition. Where the Agency grants the petition, EPA must publish the revised lists within an additional 6 months.

90-day Notification—Section 612(e) requires EPA to require any person who produces a chemical substitute for a class I substance to notify the Agency not less than 90 days before new or existing chemicals are introduced into interstate commerce for significant new uses as substitutes for a class I substance. The producer must also provide the Agency with the producer's unpublished health and safety studies on such substitutes.

Outreach—Section 612(b)(1) states that the Administrator shall seek to maximize the use of federal research facilities and resources to assist users of class I and II substances in identifying and developing alternatives to the use of such substances in key commercial applications.

Clearinghouse—Section 612(b)(4) requires the Agency to set up a public clearinghouse of alternative chemicals, product substitutes, and alternative manufacturing processes that are available for products and manufacturing processes which use class I and II substances.

B. Regulatory History

On March 18, 1994, EPA published the Final Rulemaking (FRM) (59 FR 13044) which described the process for administering the SNAP program and issued EPA's first acceptability lists for substitutes in the major industrial use sectors. These sectors include: Refrigeration and air conditioning; foam blowing; solvent cleaning; fire suppression and explosion protection; sterilants; aerosols; adhesives, coatings and inks; and tobacco expansion. These sectors compose the principal industrial sectors that historically consumed the largest volumes of ozone-depleting compounds.

As described in the final rule for the SNAP program (59 FR 13044), EPA does not believe that rulemaking procedures are required to list alternatives as acceptable with no limitations. Such listings do not impose any sanction, nor do they remove any prior license to use a substance. Consequently, by this notice EPA is adding substances to the list of acceptable alternatives without first requesting comment on new listings.

EPA does, however, believe that Notice-and-Comment rulemaking is required to place any substance on the list of prohibited substitutes, to list a substance as acceptable only under certain conditions, to list substances as acceptable only for certain uses, or to remove a substance from either the list of prohibited or acceptable substitutes. Updates to these lists are published as separate notices of rulemaking in the Federal Register.

The Agency defines a ''substitute'' as any chemical, product substitute, or alternative manufacturing process, whether existing or new, that could replace a class I or class II substance. Anyone who produces a substitute must provide the Agency with health and safety studies on the substitute at least 90 days before introducing it into interstate commerce for significant new use as an alternative. This requirement applies to substitute manufacturers, but may include importers, formulators or end-users, when they are responsible for introducing a substitute into commerce.

EPA published Notices listing acceptable alternatives on August 26, 1994 (59 FR 44240), January 13, 1995 (60 FR 3318), July 28, 1995 (60 FR 38729), February 8, 1996 (61 FR 4736), and September 5, 1996 (61 FR 47012), and published Final Rulemakings restricting the use of certain substitutes on June 13, 1995 (60 FR 31092), May 22, 1996 (61 FR 25585), and October 16, 1996 (61 FR 54030).

II. Listing of Acceptable Substitutes

This section presents EPA's most recent acceptable listing decisions for substitutes for class I and class II substances in the following industrial sectors: refrigeration and air conditioning, and foam blowing. In this Notice, EPA has split the refrigeration and air conditioning sector into two parts: substitutes for class I substances and substitutes for class II substances. For copies of the full list, contact the EPA Stratospheric Protection Hotline at (800) 296–1996.

Parts A through C below present a detailed discussion of the substitute listing determinations by major use sector. Tables summarizing today's listing decisions are in Appendix A. The comments contained in Appendix A provide additional information on a substitute, but for listings of acceptable substitutes, they are not legally binding under section 612 of the Clean Air Act. Thus, adherence to recommendations in the comments is not mandatory for use as a substitute. In addition, the comments should not be considered comprehensive with respect to other legal obligations pertaining to the use of the substitute. However, EPA encourages users of acceptable substitutes to apply all comments to their use of these substitutes. In many instances, the comments simply allude to sound operating practices that have already been identified in existing industry and/or building-code standards. Thus, many of the comments, if adopted, would not require significant changes in existing operating practices for the affected industry.

A. Refrigeration and Air Conditioning: Class I

1. Secondary Loop Systems

In the Notice published September 5, 1996 (61 FR 47012) EPA solicited information about fluids used in secondary loop systems. EPA believes that the use of secondary fluids offers potential environmental and safety benefits, and requested this information to determine whether it would be

appropriate to list secondary fluids formally under the SNAP program.

EPA received no comments or information supporting the listing of these fluids under SNAP. In fact, one company provided information urging EPA to not list secondary fluids under SNAP. The company expressed concern that listing secondary fluids would discourage their use and would be extremely burdensome to the Agency and the regulated community. The company also indicated that EPA had vastly underestimated the number and variety of fluids used as secondary fluids.

EPA has decided not to list secondary fluids under SNAP based on the above discussion and the lack of information or data suggesting that the use of these fluids in secondary loops poses any environmental or safety risk. EPA is also sensitive to the resources required for preparing submissions, reviews, and listings and to the disincentive that regulating them may create. However, EPA will keep abreast of new secondary fluids as they are introduced in the market, and may revisit this decision as appropriate. EPA will also include information about secondary fluids in outreach materials and encourage their use where the potential for environmental and safety benefits could be attained.

2. Acceptable Substitutes

Note that EPA acceptability does not mean that a given substitute will work in a specific type of equipment within an end-use. Engineering expertise must be used to determine the appropriate use of these and any other substitutes. In addition, although some alternatives are listed for multiple refrigerants, they may not be appropriate for use in all equipment or under all conditions.

a. HFC–236fa. HFC–236fa, when manufactured using any process that does not convert perfluoroisobutylene (PFIB) directly to HFC–236fa in a single step, is acceptable as a substitute for CFC–114 in industrial process refrigeration. HFC–236fa does not harm the ozone layer because it does not contain chlorine. HFC–236fa has an extremely high 100-year GWP of 6,300, but its lifetime is considerably shorter than that of perfluorocarbons. HFC–236fa is the only alternative submitted to date that is safe for the ozone layer, is low in toxicity, and can be a substitute in industrial process heat pumps. Note that the prohibition on venting, which applies to all substitute refrigerants, was mandated in section 608(c)(2) and took effect on November 15, 1995.

EPA is aware of several methods for manufacturing HFC–236fa, including one that produces HFC–236fa directly from PFIB. PFIB is an extremely toxic substance that could pose risks in very small concentrations. Thus, EPA believes it is appropriate to distinguish among the different methods for producing HFC–236fa.

B. Foam Blowing

1. Acceptable Substitutes

a. Polyisocyanurate and Polyurethane Rigid Boardstock Foam. (a) Saturated Light Hydrocarbons C3–C6. Saturated Light Hydrocarbons C3–C6 are acceptable substitutes for HCFCs in polyisocyanurate and polyurethane rigid boardstock foam. Hydrocarbons are more flammable than CFCs and HCFCs and use would likely require additional investment to assure safe handling, use and shipping. These hydrocarbons have zero global warming potential (GWP) but are volatile organic compounds (VOCs) and must be controlled as such under Title I of the Clean Air Act. Relevant building codes and other safety requirements necessary for use of hydrocarbon-blown boardstock foam would have to be met.

b. Polyurethane Rigid Appliance Foam. (a) HFC–134a. HFC–134a (or blends thereof) is an acceptable substitute for HCFCs in polyurethane rigid appliance foam. HFC–134a has low toxicity and is non-flammable. However, HFC–134a has relatively high thermal conductivity and has the potential to contribute to global warming.

(b) Saturated light hydrocarbons C3–C6. Saturated light hydrocarbons C3–C6 (or blends thereof) are acceptable substitutes for HCFCs in polyurethane rigid appliance foam. Hydrocarbons are more flammable than CFCs and HCFCs and use would likely require additional investment to assure safe handling and use. These hydrocarbons have zero global warming potential (GWP) but are volatile organic compounds (VOCs) and must be controlled as such under Title I of the Clean Air Act.

(c) Carbon dioxide. Carbon dioxide (or blends thereof) is an acceptable alternative to HCFCs in polyurethane appliance foam.

III. Additional Information

Contact the Stratospheric Protection Hotline at 1–800–296–1996, Monday–Friday, between the hours of 10:00 a.m. and 4:00 p.m. (Eastern Standard Time).

For more information on the Agency's process for administering the SNAP program or criteria for evaluation of substitutes, refer to the SNAP final rulemaking published in the Federal Register on March 18, 1994 (59 FR 13044). Federal Register notices can be ordered from the Government Printing Office Order Desk (202) 783–3238; the citation is the date of publication. This Notice may also be obtained on the World Wide Web at http://www.epa.gov/ozone/title6/snap/snap.html.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: February 28, 1997.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

Note: The following Appendix will not appear in the Code of Federal Regulations.

APPENDIX A: SUMMARY OF ACCEPTABLE DECISIONS, REFRIGERATION SECTOR

[Acceptable Decisions]

End-use	Substitute	Decision	Comments
CFC–114, Industrial Process Refrigeration.	HFC–236fa	Acceptable when manufactured using any process that does not convert perfluoroisobutylene (PFIB) directly to HFC–236fa in a single step, is acceptable as a substitute for CFC–114 in industrial process refrigeration.	

APPENDIX A: SUMMARY OF ACCEPTABLE DECISIONS, REFRIGERATION SECTOR—Continued

[Acceptable Decisions]

End-use	Substitute	Decision	Comments
Foam Sector—Acceptable Decisions			
HCFCs Rigid polyurethane and polyisocyanurate laminated boardstock.	Saturated Light Hydrocarbons C3–C6.	Acceptable	Zero ODP and GWP but must adhere to VOC regulations. Flammable.
HCFCs Rigid polyurethane appliance.	HFC–134a	Acceptable	Non-flammable and low toxicity but may contribute to global warming.
Saturated Light Hydrocarbons C3–C6	Acceptable	Zero ODP and GWP but must adhere to VOC regulations. Flammable..	
	Carbon Dioxide	Acceptable	High thermal conductivity.

[FR Doc. 97–5887 Filed 3–7–97; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 180

[OPP–300459; FRL–5591–9]

RIN AB–78

Sulfentrazone; Establishment of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes tolerances for residues of the herbicide sulfentrazone (N-[2,4-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1H-1,2,4-triazol-1-yl]phenyl]methanesulfonamide) and its major metabolite 3-hydroxymethyl sulfentrazone (N-[2,4-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-hydroxymethyl-5-oxo-1H-1,2,4-triazol-1-yl]phenyl]methanesulfonamide), in or on the raw agricultural commodity soybean seed at 0.05 ppm and for combined inadvertent residues of sulfentrazone, and its metabolites, 3-hydroxymethyl sulfentrazone and 3-desmethyl sulfentrazone [N-[2,4-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-5-oxo-1H-1,2,4-triazol-l-yl]phenyl]methanesulfonamide] in cereal grains (excluding sweet corn) forage at 0.2 ppm, straw at 0.6 ppm, hay at 0.2 ppm, grain at 0.1 ppm, stover at 0.1 ppm, bran at 0.15 ppm and hulls at 0.30 ppm. FMC Corporation submitted a petition to EPA under the Federal Food, Drug and Cosmetic Act as amended by the Food Quality Protection Act of l996 (Pub. L. 104-170) requesting the tolerances.

EFFECTIVE DATE: This regulation becomes effective March 10, 1997.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [PF–670/OPP–300459], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled Tolerance Petition Fees and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the docket control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically to the OPP by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov.

Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number PF–670/OPP–300459. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne I. Miller, Product Manager (PM) 23, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 237, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6224; e-mail: miller.joanne@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the Federal Register of November 6, 1996 (60 FR 57420) (FRL–5571–4), EPA issued a notice pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), announcing the filing of a pesticide tolerance petition by FMC Corporation, 1735 Market Street, Philadelphia, PA 19103. The petition requested to amend 40 CFR part 180 by establishing a tolerance for residues of the herbicide sulfentrazone (N-[2,4-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1H-1,2,4-triazol-1-yl] phenyl]methanesulfonamide) in or on raw agricultural commodity soybean seed at 0.05 ppm and rotational crop tolerances in cereal grains from 0.1 to 0.5 ppm. There were no comments received in response to the notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data listed below were considered in support of these tolerances.

I. Toxicological Profile

1. A battery of acute toxicity studies placed technical sulfentrazone in Toxicity Categories III and IV. No evidence of sensitization was observed following dermal application in guinea pigs.

2. A 90–day subchronic toxicity study was conducted in rats, with dietary intake levels of 0, 3.3, 6.7, 19.9, 65.8, 199.3, or 534.9 mg/kg/day for males and 0, 4, 7.7, 23.1, 78.1, 230.5, or 404.3 milligrams/kilograms/day (mg/kg/day) for females respectively. No Observed Effect Levels (NOELs) of 19.9 mg/kg/day in males and 23.1 mg/kg/day in females were based on clinical anemia.

3. A 90–day subchronic feeding study was conducted in mice by dietary admix

at doses of 0, 10.3, 17.8, 60.0, 108.4, or 194.4 mg/kg/day for males and 0, 13.9, 29.0, 79.8, 143.6, or 257.0 mg/kg/day for females, respectively. NOELs of 60 mg/kg/day (males) and 79.8 mg/kg/day (females) were based on decreases in body weights and/or gains; decreased erythrocytes, hemoglobin and hematocrit values; and splenic microscopic pathology.

4. In a 90–day subchronic feeding study in dogs administered by dietary admix at doses of 0, 10, 28, or 57 mg/kg/day for males and 0, 10, 28, or 73 mg/kg/day for females, a NOEL of 28 mg/kg/day was determined for both males and females based on decreases in hemoglobin and hematocrit, elevated alkaline phosphatase levels, increased liver weights and microscopic liver as well as splenic changes.

5. A 12–month feeding study in dogs was dosed at levels of 0.0, 9.9, 24.9, or 61.2 mg/kg/day for male dogs and 0.0, 10.4, 29.6, or 61.9 mg/kg/day for female dogs in the control through high-dose groups, respectively, with a NOEL of 24.9 mg/kg/day for males and 29.6 mg/kg/day for females based on hematology effects and microscopic liver changes.

6. An 18–month feeding/carcinogenicity study in mice was conducted with dietary intake of 0, 46.6, 93.9, 160.5, or 337.6 mg/kg/day for males and 0, 58.0, 116.9, 198.0, or 407.1 mg/kg/day for females. A NOEL of 93.9 mg/kg/day in males and 116.9 mg/kg/day in females was based on decreases in hemoglobin and hematocrit. There were no treatment-related increases in tumors of any kind observed at any dose level.

7. In a 24–month chronic feeding/oncogenicity study in rats at dietary doses of 0, 24.3, 40.0, 82.8, or 123.5 mg/kg/day for males and 0, 20.0, 36.4, 67.0, or 124.7 mg/kg/day for females, an overall NOEL of 40.0 mg/kg/day in males and 36.4 mg/kg/day in females was based on hematology effects and reduced body weights. There was no evidence of an oncogenic response.

8. A prenatal oral developmental toxicity study in the rat with dose levels at 25.0 or 50.0 mg/kg/day established a maternal NOEL of 25 mg/kg/day based on decreased body weight gain, increased spleen weight, and microscopic changes in the spleen, and a fetal NOEL of 10 mg/kg/day was based on fetal death, reduced body weights, and alterations in skeletal development at higher doses.

9. A supplemental oral developmental toxicity study conducted in rats at oral dose levels of 25.0 and 50.0 mg/kg/day to test for cardiac effects at the request of the EPA, did not reveal any significant effects on fetal cardiac development. The results of this study confirmed the maternal and fetal findings of the previously-conducted developmental study on sulfentrazone in rats and did not alter the study conclusions.

10. In a dermal developmental study in the rat at doses of 0, 5, 25, 50, 100 and 250 mg/kg/day, a maternal (systemic) No Observed Adverse Effect Level (NOAEL) was established at 250 mg/kg/day. Significant treatment-related increases in the fetal and litter incidences of incompletely ossified lumbar vertebral arches, hypoplastic or wavy ribs, and incompletely ossified or nonossified ischia or pubes occurred at the high-dose (250 mg/kg/day). An additional significant increase in the high-dose fetal incidence of variations in the sternebrae (incompletely ossified or unossified) was not judged to be treatment-related. At 250 mg/kg/day, the mean numbers of thoracic vertebral and rib ossification sites were significantly decreased, a high-dose effect of treatment with sulfentrazone consistent with the significant treatment-related hypoplasia observed in the skeletal evaluation of the ribs. Therefore, the developmental (fetal) Lowest Observed Effect Level (LOEL) is 250 mg/kg/day based on decreased fetal body weight; increased incidences of fetal variations: hypoplastic or wavy ribs, incompletely ossified lumbar vertebral arches, and incompletely ossified ischia or pubes; and reduced number of thoracic vertebral and rib ossification sites. The developmental (fetal) NOEL is 100 mg/kg/day.

11. A developmental toxicity study in rabbits was conducted at gavage dose levels of 0, 100, 250, or 375 mg/kg/day. Treatment-related incidences of decreased feces and hematuria were noted at 250 mg/kg/day or greater. In addition, at the 375 mg/kg/day dose level, five rabbits aborted. Significant reductions in mean body weight change were observed for the dosing period (GD 7- 19) and for the study duration (GD 0-29, both before and after adjustment for gravid uterine weight) at the 250 and 375 mg/kg/day dose levels. Therefore, the maternal (systemic) LOEL is 250 mg/kg/day, based upon increased abortions, clinical signs (hematuria and decreased feces), and reduced body weight gain. The maternal (systemic) NOEL is 100 mg/kg/day. Skeletal evaluation in fetuses revealed dose- and treatment-related findings at the 375 mg/kg/day dose level. These included significant increases in both the fetal and litter incidences of fused caudal vertebrae (a malformation) and of partially fused nasal bones (a variation). In addition, at 375 mg/kg/day, significant treatment-related reductions in ossification site averages were observed for metacarpals and both fore- and hindpaw phalanges. Therefore, the developmental (fetal) LOEL is 250 mg/kg/day, based upon increased resorptions, decreased live fetuses per litter, and decreased fetal weight. The developmental (fetal) NOEL is 100 mg/kg/day.

12. A two-generation reproduction study in the rat at dietary levels of 14, 33, or 46 mg/kg/day in males and 16, 40, or 56 mg/kg/day in females established a NOEL for systemic and reproductive/developmental parameters of 14 mg/kg/day for males and 16 mg/kg/day for females. The LOEL for systemic and reproductive/development parameters was 33 mg/kg/day for males and 40 mg/kg/day for females. Systemic effects were comprised of decreased body weight gains, while reproductive/developmental effect at the LOEL included degeneration and/or atrophy in the testes, with epididymal sperm deficits, in the second (F1) generation males. Male fertility in the F1 generation was reduced at higher doses; litter size, pup survival, and pup body weight for both generations were also effected at higher doses.

13. A supplemental two-generation rat reproduction study was conducted at dietary intake levels of 50, 100, 200, or 500 ppm with a NOEL for reproductive parameters of 200 ppm. This study confirmed the reproductive/developmental effects observed in the first two-generation reproductive toxicity study. It was the conclusion of the RfD/Peer Review Committee that, under the conditions of the studies reviewed, sulfentrazone caused developmental and reproductive toxicity. The results of these studies elicited a high level of concern by the Committee, since the developmental toxicity studies demonstrated embryo/fetal toxicity at treatment levels that were not maternally toxic, and significant toxic effects were observed primarily in the second generation animals of the reproduction study. Because these animals had been exposed to sulfentrazone *in utero*, the possibility that the observed reproductive toxicity resulted from a developmental and/or genotoxic mechanism was suggested.

14. A reverse gene mutation assay (*salmonella typhimurium*) yielded negative results, both with and without metabolic activation.

15. A mouse lymphoma forward gene mutation assay yielded negative results with equivocal results without activation.

16. A mouse micronucleus assay test was negative following intraperitoneal injection of 340 mg/kg.

17. In an acute neurotoxicity study in rats at gavage doses of 0, 250, 750, or 2,000 mg/kg, a NOEL of 250 mg/kg and a LOEL of 750 mg/kg were based upon increased incidences of clinical signs, Functional Observation Battery (FOB) findings, and decreased motor activity which were reversed by day 14 post-dose. There was no evidence of neuropathology.

18. A 90–day subchronic neurotoxicity study in the rat was conducted at dietary levels of 30, 150, or 265 mg/kg/day in males, and 37, 180, or 292 mg/kg/day in females, with a NOEL of 30 mg/kg/day in males and 37 mg/kg/day in females. The LOEL was 150 mg/kg/day for males and 180 mg/kg/day for females based on increased incidences of clinical signs, decreased body weights, body weight gains, and food consumption in females and increased motor activity in females at week 13. There were no neurohistopathological effects on the peripheral or central nervous system.

19. A metabolism study in rats indicated that approximately 84 to 104% of the orally administered dose of sulfentrazone was excreted in the urine, and that the pooled urinary radioactivity consisted almost entirely of 3-hydroxymethyl sulfentrazone. Pooled fecal radioactivity showed that the major metabolite consisted of 3-hydroxymethyl-sulfentrazone (1.26 to 2.55% of the administered dose). The proposed metabolic pathway appeared to be conversion of the parent compound mainly to 3-hydroxymethyl-sulfentrazone (excreted in urine and feces).

II. Aggregate Exposures

1. *Food and feed uses*. The primary source for human exposure to sulfentrazone will be from ingestion of both raw and processed agricultural commodities from soybeans. A DRES chronic exposure analysis was performed using tolerance level residues and 100% crop treated information to estimate the Theoretical Maximum Residue Contribution (TMRC) for the general population and 22 subgroups. The chronic analysis showed that exposure from the proposed new tolerance, in/on soybeans, on cereal grains (excluding sweet corn), on bran of cereal grains, milk, eggs, and meat for children 1 to 6 years old (the subgroup with the highest exposure) would be 38.8% of the RfD. The exposure for the general U.S. population would be 16.7% of the RfD.

The analysis for sulfentrazone is a worst case estimate of dietary exposure with all residues at tolerance level and 100 percent of the commodities assumed to be treated with sulfentrazone. Even without refinements, the chronic dietary risk exposure to sulfentrazone appears to be minimal for this petition.

2. *Potable water*. A ground water exposure estimate for sulfentrazone is based on findings from a voluntary prospective ground water study conducted in a sandy (worst case) site in North Carolina. Although this single ground water monitoring study was incomplete, enough data were collected to confirm that sulfentrazone leaches substantially to ground water in areas with sandy soils. Sulfentrazone was found in ground water at concentrations as high as 37 parts per billion (ppb) in shallow wells and 19 ppb in deeper wells. Residues in shallow ground water were highly persistent and only slowly dissipated, with little change in concentrations over a 1-year period, at which time sampling was terminated. The use of 37 ppb in estimating dietary exposure through ground water represents the worst case. The worst case is based on soil type (sandy) and a limited population that would obtain their drinking water from wells in this type of soil. However, HED feels that due to sulfentrazone's mobility (Koc = 43; Kd = 0.2-0.8) and persistence (≈9 year half life), over time the worst case values may be approached in more typical ground water settings. Using 37 ppb, the dietary exposure from potable water is 0.00105 mg/kg/day to adults and 0.0037 mg/kg/day for children 1 to 6 years old.

3. *Non-dietary uses*. Since the petition for use of sulfentrazone is limited to commercial soybean production, no non-dietary exposures are expected for the general population.

4. *Cumulative exposure to substances with common mechanism of toxicity*. Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' While the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the capability to resolve the scientific issues concerning common mechanism of toxicity in a meaningful way. EPA is commencing a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will enable the Agency to apply common mechanism issues to its pesticide risk assessments. At present, however, the Agency does not know how to apply the information in its files concerning common mechanism issues to risk assessments, and therefore believes that in most cases there is no ''available information'' concerning common mechanism that can be scientifically applied to tolerance decisions. Where it is clear that a particular pesticide may share a significant common mechanism with other chemicals, or where it is clear that a pesticide does not share a common mechanism with other chemicals, a tolerance decision may be affected by common mechanism issues. The Agency expects that most tolerance decisions will fall into the area in between, where EPA cannot reasonably determine whether a pesticide does or does not share a common mechanism of toxicity with other chemicals (and, if so, how that common mechanism should be factored into a risk assessment). In such circumstances, the Agency will reach a tolerance decision based on the best, currently-available and usable information, without regard to common mechanism issues. However, the Agency will also revisit such decisions when the Agency determines how to apply common mechanism information to pesticide risk assessments.

In the case of sulfentrazone, EPA has determined that it does not now have the capability to apply the information in its files to a resolution of common mechanism issues in a manner that would be useful in a risk assessment. This tolerance determination therefore does not take into account common mechanism issues. The Agency will reexamine the tolerances for sulfentrazone, if reexamination is appropriate, after the Agency has determined how to apply common mechanism issues to its pesticide risk assessments.

III. Determination of Safety for U.S. Population and Children

1. *The U.S. population*. Based on a NOEL of 14 mg/kg/day body weight (bwt)/day from a two-generation rat reproduction study that demonstrated histopathological findings in testes and epididymides of second generation males as an endpoint, and using an uncertainty factor of 1,000, the Agency has determined a reference dose (RfD) of 0.014 mg/kg bwt/day for this assessment of risk. The extra factor of 10 and the uncertainty factor of 1,000 is to provide

added protection for infants and children. Based on the available toxicity data and the available exposure data identified above, the proposed tolerances will utilize 16.7% of the RfD for the U.S. population. Including an estimated exposure of 37 ppb in potable water, and assuming the injection of two liters of water per day, the dietary exposure for the U.S. adult population is increased and utilizes approximately 25% of the RfD.

2. *Children (1 to 6 years old).* Using the RfD of 0.014 mg/kg bwt/day, as described above, and a Theoretical Maximum Residue Contribution (TMRC) of 0.005437 mg/kg bwt/day determined for children (1 to 6 years old), the proposed tolerances will utilize 38.8% of the RfD. Including an estimated exposure of 37 ppb in potable water, and assuming the injection of 1 liter of water per day, the dietary exposure for children (1 to 6 years old) population is increased and utilizes approximately 65% of the RfD.

3. *Non-food uses.* There are no non-food uses of sulfentrazone registered under the Federal Insecticide, Fungicide and Rodenticide Act, as amended.

IV. Determination of Safety for Infants and Children

Risk to infants and children was determined by use of developmental toxicity studies in rats and a two-generation reproduction study in rats. The oral developmental toxicity studies resulted in a maternal NOEL of 25 mg/kg/day based on decreased body weight gain, increased spleen weight, and microscopic changes in the spleen, and a fetal NOEL of 10 mg/kg/day based on fetal death, reduced body weights, and alterations in skeletal development at higher doses. A dermal developmental toxicity study in rats resulted in a developmental (fetal) NOEL of 100 mg/kg/day based on decreased fetal body weight and increased incidences of fetal alterations, comprised primarily of skeletal variations and reductions in mean numbers of ossification sites. A two-generation reproduction study in rats resulted in a NOEL for systemic and reproductive/developmental parameters of 14 mg/kg/day for males and 16 mg/kg/day for females. The LOEL for systemic and reproductive/development parameters was 33 mg/kg/day for males and 40 mg/kg/day for females. Systemic effects were comprised of decreased body weight gains, and reproductive/developmental effects at the LOEL included degeneration and/or atrophy of the testes, with epididymal sperm deficits in the second (F1) generation males. Male fertility in the F1 generation was reduced at higher doses; litter size, pup survival and pup body weight for both generations were also effected at higher doses.

FFDCA section 408 provides that EPA shall apply an additional safety factor for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the data base, unless EPA determines that such an additional factor is not necessary to protect the safety of infants and children. Based on current data requirements, the data base relative to pre- and post-natal toxicity is complete. EPA has determined that the toxicology data profile for sulfentrazone contains clear, unequivocal evidence that this chemical causes developmental and reproductive toxicity. Based upon the available data and toxicity profile, the Agency RfD Peer Review Committee considered sulfentrazone to be a relatively potent reproductive/developmental toxicant, and determined that an additional 10-fold uncertainty factor for the protection of infants and children was warranted.

This decision was based upon the data described above. The following facts were considered in reaching this conclusion:

(1) The lowest NOEL for chronic exposure, which is used to determine the RfD, is based upon severe, irreversible reproductive/developmental effects, observed in the two-generation reproduction study in rats.

(2) Developmental toxicity was observed in the absence of maternal effects in the prenatal developmental toxicity studies in rats (developmental NOELs were lower than maternal NOELs). This apparent increased sensitivity of the fetuses occurred following administration of sulfentrazone by either the dermal or the oral route, both of which are relevant to human exposure.

(3) A steep dose-response curve exists for the reproductive and developmental endpoints of concern. The reproductive and/or developmental LOELs for the prenatal developmental toxicity studies in rats and the two-generation reproduction study are only approximately 2.5 times greater than the corresponding NOELs in each of these studies. The reproductive and developmental NOELs are extremely low (i.e., in the range of 10 to 13 mg/kg/day). Additionally, in the rat prenatal developmental toxicity and two-generation reproduction studies, the reproductive/developmental effects increase in incidence and/or severity at higher doses.

(4) The reproductive/developmental toxicity profile is consistent and reproducible, providing a large measure of confidence in the endpoints and dose levels.

The percent of the RfD that will be utilized by the aggregate exposure to sulfentrazone for the most exposed subgroup would be 65% for children (1 to 6 years old) Therefore, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure.

V. Other Considerations

1. *Endocrine effects.* An evaluation of the potential effects on the endocrine systems of mammals has not been determined; however, no evidence of such effects were reported in the chronic or reproductive toxicology studies described above. There was no observed pathology of the endocrine organs in these studies. There is no evidence at this time that sulfentrazone causes endocrine effects.

2. *Metabolism in plants and animals.* The metabolism of sulfentrazone in plants and animals is adequately understood for the purposes of these tolerances. Crop residues found after the pre-emergence use were the major metabolites 3-hydroxymethyl sulfentrazone and 3-desmethyl sulfentrazone. In rotational crops, sulfentrazone is metabolized via four different pathways: (i) Oxidation of the 3-methyl group to form 3-hydroxymethyl sulfentrazone, followed by further oxidation to form sulfentrazone carboxylic acid which is decarboxylated to 3-desmethyl sulfentrazone; (ii) hydrolysis of the trifluoromethyl group to form desdifluoromethyl sulfentrazone which is oxidized and decarboxylated to form desdifluoromethyl desmethyl sulfentrazone; (iii) hydrolysis of the sulfonamide group to form desmethylsulfonyl sulfentrazone; and (iv) scission of the phenyl and triazole rings to produce methyl triazole. The corresponding phenyl metabolites are believed to remain bound. In animal metabolism sulfentrazone *per se* was the predominant component of the residue. The metabolite 3-hydroxymethyl sulfentrazone was also identified. It was determined by EPA that a soybean tolerance based on the parent and 3-hydroxymethyl sulfentrazone is therefore appropriate.

3. *Analytical method.* There is a practical analytical method for detecting and measuring levels of sulfentrazone and its metabolites in or on food with a limit of detection that allows monitoring of food with residues at or above the levels set in these tolerances. The proposed analytical method for determining residues is hydrolysis

followed by gas chromatographic separation. EPA will provide information on this method to the Food and Drug Administration. Because of the long lead time from establishing these tolerances to publication the enforcement methodology is being made available in the interim to anyone interested in pesticide enforcement when requested by mail from: Calvin Furlow, Public Response Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1130A, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305-5937.

4. *International tolerances*. There are no Codex Alimentarius Commission (Codex) Maximum Residue Levels (MRLs) for sulfentrazone.

5. *Data Gaps*. Data gaps currently exist for a 21-day dermal study in rabbits, *in vivo* cytogenetics dominant lethal assay in rats, a wheat processing study, additional rice field trials and residue data for sorghum aspirated grain fractions. Based on the toxicological data and the levels of exposure, EPA has determined that the proposed tolerances will be safe.

VI. Summary of Findings

The analysis for sulfentrazone using tolerance level residues shows the proposed uses on soybeans will not cause exposure to exceed the levels at which the Agency believes there is an appreciable risk. All population subgroups examined by EPA are exposed to sulfentrazone residues at levels below 100% of the RfD for chronic effects.

Based on the information cited above, the Agency has determined that the establishment of the tolerances by adding a new section to 40 CFR part 180 will be safe; therefore, the tolerances are established as set forth below.

VII. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a tolerance regulation issued by EPA under new section 408(e) and (1)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which governs the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by May 9, 1997, file written objections to any aspect of this regulation (including the automatic revocation provision) and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VIII. Public Docket

A record has been established for this rulemaking under docket control number PF–670/OPP–300459. A public version of this record, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operation Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. EPA has also established a special record for post-FQPA tolerances which contains documents of general applicability. This record can be found in the same location.

The official record for this rulemaking, as well as the public version, as described above, is kept in paper form. Accordingly, in the event there are objections and hearing requests, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record. The official rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

IX. Regulatory Assessment Requirements

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), this action is not a ''significant regulatory action'' and since this action does not impose any information collection requirements subject to approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq*., it is not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty, or contain any ''unfunded mandates'' as described in Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation as specified by Executive Order 12875 (58 FR 58093, October 28, l993), or special considerations as required by Executive Order 12898 (59 FR 7629, February 16, l994).

Because tolerances established on the basis of a petition under section 408(d) of FFDCA do not require issuance of a proposed rule, the regulatory flexibility analysis requirements of the Regulatory Flexibility Act (RFA), 5 U.S.C. 604(a), do not apply. Prior to the recent amendment of the FFDCA, EPA had treated such rulemakings as subject to the RFA; however, the amendments to the FFDCA clarify that no proposal is required for such rulemakings and hence that the RFA is inapplicable.

Pursuant to 5 U.S.C. 801(a)(1)(A), EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a major rule as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 27, 1997.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. By adding § 180.498 to read as follows:

§ 180.498 Sulfentrazone; tolerances for residues.

(a) *Tolerance--general.* A tolerance is established for combined residues of the herbicide sulfentrazone N-[2,4-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1H-1,2,4-triazol-1-yl]phenyl]methanesulfonamide and its major metabolite 3-hydroxymethyl sulfentrazone N-[2,4-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-hydroxymethyl-5-oxo-1H-1,2,4-triazol-1-yl]phenyl]methanesulfonamide in or on the following raw agricultural commodity:

Commodity	Parts per million
Soybean, seed	0.05

(b) *Tolerances--inadvertent and indirect residues.* Tolerances are established for inadvertent and indirect combined residues of the herbicide sulfentrazone (N-[2,4-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1H-1,2,4-triazol-1-yl]phenyl]methanesulfonamide) and its metabolites 3-hydroxymethyl sulfentrazone (N-[2,4-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-hydroxymethyl-5-oxo-1H-1,2,4-triazol-1-yl]phenyl]methanesulfonamide) and 3-desmethyl sulfentrazone (N-[2,4-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-5-oxo-1H-1,2,4-triazol-l-yl]phenyl]methanesulfonamide) in or on the following raw agricultural commodities when present therein as a result of the application of sulfentrazone to growing crops.

Commodity	Parts per million
Cereal Grains (excluding sweet corn), Bran	0.15
Cereal Grains (excluding sweet corn), Forage	0.2
Cereal Grains (excluding sweet corn), Grain	0.1
Cereal Grains (excluding sweet corn), Hay	0.2
Cereal Grains (excluding sweet corn), Hulls	0.30
Cereal Grains (excluding sweet corn), Stover	0.1
Cereal Grains (excluding sweet corn), Straw	0.6

[FR Doc. 97–5874 Filed 3–7–97; 8:45 am]

BILLING CODE 6560–50–F

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 302–1, 302–2, 302–3, 302–7, 302–8, 302–9, and 302–11

[FTR Amendment 58]

RIN 3090–AG17

Federal Travel Regulation; Authority for the Administrator of General Services To Issue Regulations; Authority To Waive Limitations on Relocation Allowances When an Employee Is Relocated To or From a Remote or Isolated Location; Technical Correction To Relocation Income Tax (RIT) Allowance

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: This final rule amends the Federal Travel Regulation (FTR) to reflect the direct authority conferred by statute on the Administrator of General Services to issue regulations implementing subchapter II of chapter 57 of title 5, United States Code, and to authorize agencies to waive certain statutory and regulatory limitations for an employee relocating to or from a remote or isolated location. This amendment also makes a technical correction to the RIT allowance. The amendment implements statutory changes, and is intended to improve the treatment of an employee transferred to a remote or isolated location.

DATES: This final rule is effective March 22, 1997.

Applicability: This rule applies to an employee whose effective date of transfer (date the employee reports for duty at the new official station) is on or after March 22, 1997.

FOR FURTHER INFORMATION CONTACT: Robert A. Clauson, Travel and Transportation Management Policy Division (MTT), Washington, DC 20405, telephone 202–501–0299.

SUPPLEMENTARY INFORMATION: On September 23, 1996, the President signed into law the Federal Employee Travel Reform Act of 1996 (Pub. L. 104–201). Section 1722 of the Act transfers from the President to the Administrator of General Services authority to issue regulations implementing subchapter II of chapter 57 of title 5, United States Code, unless otherwise specified in subchapter II. Previously, the Administrator had exercised implementation authority under E.O. 11609, 36 FR 13747, 3 CFR, 1971–1975 Comp., p. 586; E.O. 12466, 49 FR 7349, 3 CFR, 1984 Comp., p. 165; and E.O. 12522, 50 FR 26337, 3 CFR, 1985 Comp., p. 375. This amendment reflects the statutory change of authority.

Section 1722 of the Act also directs the Administrator to authorize heads of agencies or their designees to waive any limitation in subchapter II of chapter 57 of title 5, United States Code, or in any implementing regulation for an employee relocating to or from a remote or isolated location who otherwise would suffer hardship. This amendment implements the limitation waiver provisions of section 1722 of the Act.

This amendment also makes a technical correction to the RIT allowance. The withholding rate for supplemental wages was raised from 20 percent to 28 percent in 1995. This amendment modifies the withholding tax allowance (WTA) provisions to reflect the 28 percent withholding rate.

The General Services Administration has determined that this rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993. This final rule is not required to be published in the Federal Register for notice and comment. Therefore, the Regulatory Flexibility Act does not apply. This rule also is exempt from Congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Parts 302–1, 302–2, 302–3, 302–7, 302–8, 302–9, and 302–11

Government employees, Income taxes, Relocation allowances and entitlements, Transfers.

For the reasons set out in the preamble, 41 CFR parts 302–1, 302–2, 302–3, 302–7, 302–8, 302–9, and 302–11 are amended to read as follows:

PART 302–1—APPLICABILITY, GENERAL RULES, AND ELIGIBILITY CONDITIONS

1. The authority citation for part 302–1 is revised to read as follows:

Authority: 5 U.S.C. 5738; 20 U.S.C. 905(a); E.O. 11609, 36 FR 13474, 3 CFR, 1971–1975 Comp., p. 586.

Subpart A—New Appointees and Transferred Employees

2. Section 302–1.15 is added to subpart A to read as follows:

§ 302–1.15 Waiver of limitations for an employee relocating to or from a remote or isolated location.

The head of an agency or his/her designee may waive any limitation contained in subchapter II of chapter 57 of title 5, United States Code, or in any regulation (including this chapter) implementing those statutory provisions, for any employee relocating to or from a remote or isolated location when the following conditions are met:

(a) The limitation if not waived would cause the employee to suffer a hardship; and

(b) The head of the agency or his/her designee certifies in writing that the limitation is waived and the reason(s) for the waiver.

PART 302–2—ALLOWANCES FOR SUBSISTENCE AND TRANSPORTATION

2. The authority citation for part 302–2 is revised to read as follows:

Authority: 5 U.S.C. 5738; 20 U.S.C. 905(a); E.O. 11609, 36 FR 13474, 3 CFR, 1971–1975 Comp., p. 586.

PART 302–3—ALLOWANCE FOR MISCELLANEOUS EXPENSES

3. The authority citation for part 302–3 is revised to read as follows:

Authority: 5 U.S.C. 5738; 20 U.S.C. 905(a); E.O. 11609, 36 FR 13474, 3 CFR, 1971–1975 Comp., p. 586.

PART 302–7—TRANSPORTATION OF MOBILE HOMES

4. The authority citation for part 302–7 is revised to read as follows:

Authority: 5 U.S.C. 5738; 20 U.S.C. 905(a); E.O. 11609, 36 FR 13474, 3 CFR, 1971–1975 Comp., p. 586.

PART 302–8—TRANSPORTATION AND TEMPORARY STORAGE OF HOUSEHOLD GOODS AND PROFESSIONAL BOOKS, PAPERS, AND EQUIPMENT

5. The authority citation for part 302–8 is revised to read as follows:

Authority: 5 U.S.C. 5738; 20 U.S.C. 905(a); E.O. 11609, 36 FR 13474, 3 CFR, 1971–1975 Comp., p. 586.

PART 302–9—ALLOWANCES FOR NONTEMPORARY STORAGE OF HOUSEHOLD GOODS

6. The authority citation for part 302–9 is revised to read as follows:

Authority: 5 U.S.C. 5738; 20 U.S.C. 905(a); E.O. 11609, 36 FR 13474, 3 CFR, 1971–1975 Comp., p. 586.

PART 302–11—RELOCATION INCOME TAX (RIT) ALLOWANCE

7. The authority citation for part 302–11 is revised to read as follows:

Authority: 5 U.S.C. 5738; 20 U.S.C. 905(a); E.O. 11609, 36 FR 13474, 3 CFR, 1971–1975 Comp., p. 586.

8. Section 302–11.7 is amended by revising paragraphs (c) and (d) to read as follows:

§ 302–11.7 Procedures for determining the WTA in Year 1.

* * * * *

(c) *Determination of Federal withholding tax rate (FWTR).* Moving expense reimbursements constitute supplemental wages for Federal income tax purposes. Therefore, an agency must withhold at the withholding rate applicable to supplemental wages. Currently, the supplemental wages withholding rate is 28 percent. The supplemental wages withholding rate should be used in calculating the WTA unless under an agency's withholding procedures a different withholding rate is used pursuant to IRS tax regulations. In such cases, the applicable withholding rate shall be substituted for the supplemental wages withholding rate in the calculation shown in paragraph (d) of this section.

(d) *Calculation of the WTA.* The WTA is calculated by substituting the amounts determined in paragraphs (b) and (c) of this section into the following WTA gross-up formula:

Formula:

$$Y = \frac{X}{1-X}(N)$$

Where:

Y = WTA

X = FWTR (generally, 28 percent)

N = nondeductible moving expenses/covered taxable reimbursements

Example:

If:

X = 28 percent

N = $20,000

Then:

$$Y = \frac{.28}{1-.28}(\$20{,}000)$$

Y = .3889($20,000)

Y = $7778.00

* * * * *

Dated: February 18, 1997.

David J. Barram,

Acting Administrator of General Services.

[FR Doc. 97–5843 Filed 3–7–97; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 3, 5, 6, 9, 11, 12, 13, 15, 19, 33, 36, 37, 42, and 52

[FAC 90–45 Correction]

Federal Acquisition Regulation; Corrections

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Corrections.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are issuing corrections to Federal Acquisition Circular 90–45 published at 62 FR 224, January 2, 1997, to correct miscellaneous editorial and technical errors.

EFFECTIVE DATE: January 1, 1997, except for the correction to § 33.103, which is effective March 3, 1997.

FOR FURTHER INFORMATION CONTACT: Ms. Beverly Fayson at (202) 501–4755, General Services Administration, FAR Secretariat, Washington, DC 20405.

Corrections

In the final and interim rule documents appearing in the issue of January 2, 1997:

1. On page 226, third column, third full paragraph, first line, the word ''interim'' should read ''final''.

3.104–3 [Corrected]

2. On page 228, in the first column, under the definition for *In excess of $10,000,000,* paragraph (3) is corrected

by removing the period at the end and inserting a semicolon.

15.509 [Corrected]

3. On page 233, first column, amendatory instruction 19 is corrected to read as follows: ''Section 15.509 is amended by revising paragraph (f)(4); at the end of paragraph (h)(1) by inserting the word and; in paragraph (h)(2) by removing '; and' and inserting a period in its place; and by removing paragraph (h)(3) to read as follows:''

37.103 [Amended]

4. On page 233, in the second column, the second line from the top should appear as set forth above.

52.203–8 [Corrected]

5. In that same column, under section 52.203–8, in the clause, paragraph (a) is corrected by removing ''1996'' the first time it appears; and in paragraph (a)(2)(ii), in the last line, ''subsections'' should be singular.

6. On the same page, in the third column, amendatory instruction 29 is corrected to read as follows:

52.203–13 [Removed]

29. Section 52.203–13 is removed.

9.507–1 [Corrected]

7. On page 235, third column, amendatory instruction 10 is corrected to read as follows: ''Section 9.507–1 is amended by removing the paragraph (a) designation; redesignating paragraphs (a)(1) through (a)(4) as (a) through (d), respectively; and removing paragraphs (b), (c), and (d).''

12.503 [Corrected]

8. On page 236, first column, in 12.503(b)(4), the word ''Requirements'' should read ''Requirement''.

19.303 [Corrected]

9. On page 236, first column, amendatory instruction 17 is corrected to read as follows: ''Section 19.303 is amended by revising the introductory text of paragraph (c)(2); at the end of paragraph (c)(2)(iv) by removing the word 'and'; in paragraph (c)(2)(vi) by removing 'certifying' and inserting 'acknowledging' in its place; and by revising the second sentence of paragraph (c)(3) to read as follows:''

42.703–2 [Corrected]

10. On page 237, in the second column, 42.703–2(f)(1) is corrected in the fourth line by inserting ''Final'' after ''Certification of''.

52.216–3 [Corrected]

11. On page 261, in the first column, in the second line of the clause title, the word ''STANDARD'' should read ''SEMISTANDARD''.

52.225–21 [Corrected]

12. On page 262, second column, amendatory instruction 5 is corrected to read as follows: ''Section 52.225–21 is amended by revising the dates of the clause and Alternate I to read '(JAN 1997)' and by removing the word 'specifying' from the fourth sentence of paragraph (c) of the clause and of Alternate I and inserting ''certifying''.''

5.203 [Corrected]

13. On page 263, in the second column, in 5.203, the fourth line of paragraph (a), the word ''when'' should be removed.

6.001 [Corrected]

14. On page 263, third column, amendatory instruction 4 is corrected to read as follows: ''Section 6.001 is amended by revising paragraph (a); in paragraph (d) by removing the word 'or'; and at the end of paragraph (e)(2) by removing the period and inserting '; or' in its place.''

15. On page 263, third column, the twenty-fifth line from the bottom, the heading of Part 11 should read ''PART 11—DESCRIBING AGENCY NEEDS''.

11.104 [Corrected]

16. On page 263, third column, amendatory instruction 6 is corrected to read as follows: ''Section 11.104 is amended by revising paragraph (a); and removing the period at the end of paragraph (b) and inserting '; and' in its place. The revised text reads as follows:''

17. Also in 11.104(a) on page 264, in the first column, on the eighth line, the word ''and'' should be removed.

13.106–2 [Corrected]

18. On page 265, second column, under section 13.106–2, in the tenth line of (a)(3), remove the word ''only'' the first time it is used.

19. In the same section, on the same page, in the third column, in the third line of paragraph (a)(5), ''Contracting'' should read ''contracting''.

20. Also on page 265, third column, in the seventeenth line of paragraph (b)(1), the word ''offices'' should read ''officers''.

21. On page 267, second column, fifth line from the bottom of the page, ''0174'' should read ''017''.

33.103 [Corrected]

22. In 33.103, on page 271, first column, in the sixth line of paragraph (f)(4), the word ''agencies'' should read ''agency''.

23. On page 271, second column, in the last line under **FOR FURTHER INFORMATION CONTACT**, ''FAC 90–5'' should read ''FAC 90–45''.

24. Also on page 271, second column, the last line under *Background* should read ''FAR 36.303–2(a)''.

36.303–1 [Corrected]

25. In 36.303–1, on page 273, first column, the second line of paragraph (a) in introductory text, the word ''include'' is misspelled.

Subpart 36.4 [Reserved]

26. Also on page 273, at the bottom of the first column, the subpart heading should appear as set forth above.

Dated: March 5, 1997.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 97–5842 Filed 3–7–97; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 95–28; Notice 10]

RIN 2127–AF73

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This document amends Standard No. 108, the Federal motor vehicle safety standard on lighting, to afford an option to existing headlamp aiming specifications which is intended to improve the objectivity and accuracy of motor vehicle headlamp aim when headlamps are aimed visually and/or optically. The rule reflects the consensus of NHTSA's Advisory Committee on Regulatory Negotiation concerning the improvement of headlamp aimability performance and visual/optical headlamp aiming. The Committee was composed of representatives of government, industry, and consumer interest groups.

DATES: The rule is effective May 1, 1997. Petitions for reconsideration must be filed not later than April 24, 1997.

ADDRESSES: Petitions for reconsideration should refer to Docket No. 95–28; Notice 10, and must be submitted to: Docket Section, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. (Docket hours are from 9:30 a.m. to 4:00 p.m.).

FOR FURTHER INFORMATION CONTACT: (NHTSA Advisory Committee representative) Steve Kratzke, Office of Safety Performance Standards, NHTSA (Phone: 202–366–5203; FAX: 202–366–4329); (technical information) Rich Van Iderstine, Office of Safety Performance Standards, NHTSA (Phone: 202–366–5275; FAX: 202–366–4329); (legal information) Taylor Vinson, Office of Chief Counsel, NHTSA (Phone: 202–366–5263; FAX: 202–366–3820).

SUPPLEMENTARY INFORMATION:

I. Background

On June 9, 1995, at 60 FR 30506, the National Highway Traffic Safety Administration (NHTSA) published a notice of intent to establish an advisory committee (''the Committee'') for regulatory negotiation to develop recommended specifications for altering the lower beam patterns of Federal Motor Vehicle Safety Standard No. 108 *Lamps, Reflective Devices and Associated Equipment* to be more sharply defined. Such a pattern would facilitate visual/optical aimability of headlamps. During 1995–96, the Committee met at intervals to develop these specifications. On the basis of the Committee's recommendations, NHTSA published a notice of proposed rulemaking on July 10, 1996 at 61 FR 36334. This was followed by a correction notice published on August 20, 1996 (61 FR 43033). The reader is referred to these notices for further background information.

Because this was a negotiated rulemaking, NHTSA did not expect to receive many comments of a substantive nature. Comments were received from Valeo Vision, Hella KG Hueck & Co., Robert Bosch GmbH, Volkswagen, Stanley Electric Co. Ltd, Groupe de Travail ''Bruxelles 1952'' (GTB), Koito Manufacturing Co. Ltd., American Automobile Manufacturers Association (AAMA), Cooper Industries Wagner Lighting Division (Wagner), Advocates for Auto and Highway Safety (Advocates), Calcoast—ITL, and Volvo Cars of North America, Inc. As anticipated, all commenters supported the proposal, and the rule is adopted as proposed. However, some important points were raised in the comments, which will be discussed in the course of this notice.

II. Proposed Requirements and Their Rationales

The final rule will ensure that the visually/optically aimable lower beam of a headlamp meets the following criteria, as developed by the Committee:

A. Vertical Aim of Lower Beam

A visual cue (cutoff) is required in the lower beam pattern to permit accurate aiming. The cutoff marks a transition between the areas of higher and lower luminous intensities. The cutoff in the lower beam pattern is a horizontal line composed of maximum vertical logarithmic gradients of the screen illumination.

Vertical aim requires both a laboratory specification for headlamps before installation and a field specification for headlamps after installation. Under the final rule, the laboratory specifications are incorporated into Standard No. 108. The field specifications represent the Committee's recommendations to all persons who perform visual/optical headlamp aiming in the field and were set forth in the preamble to the NPRM.

1. Laboratory Specification for the Vertical Visual Aim of the Lower Beam

Several factors must be considered to ensure accurate and repeatable results that also relate to the requirements for field aimability. Accuracy for laboratory aim is specified to be within +/−0.1 degree. This is based on the test equipment positioning capability of +/−0.01 degree along with the associated lamp-to-lamp and laboratory-to-laboratory variances. The specification for the gradient is based on a required +/−0.1 degree laboratory aim accuracy and a 0.25 degree field aim accuracy with confidence limits of +/−2 sigma. A University of Michigan Transportation Research Institute (UMTRI) study titled ''Visual Aiming of European and U.S. Low-Beam Headlamps'' (Report No. UMTRI–91–34, by Sivak, Flannagan, Chandra, and Gellatly) provided the information needed to establish the necessary gradient within the confidence levels defined.

Measurement of the specific gradients may be carried out using traditional photometric measurement equipment; however, photometric distance may vary between companies. A procedure which has been developed by the Groupe de Travail ''Bruxelles 1952'' (GTB) Short-term Scientific Studies Working Group (SSST WG) provides a baseline system for this test. (This may be found in ''Draft Minutes of the Meeting held at Budapest 1995 October 3'' on file in the docket as attachment 3–9 to the Committee's minutes of Meeting No. 3.)

The cutoff can be on either the right or left side of the lower beam pattern. When so located, it provides the necessary reference for placing the beam in the appropriate vertical location for correct aim. In order to achieve a cutoff in a beam, there must be a distinct difference in illumination levels above and below the cutoff. This may be achieved by numerous methods in the design of a headlamp. For the purposes defined by the Committee, a horizontally oriented cutoff is necessary. Based on work done by the Society of Automotive Engineers'' (SAE) Beam Pattern Task Force (in developing SAE J1735 ''Harmonized Vehicle Headlamp Performance Requirements'), UMTRI, Commission Internationale de l'Eclairage Working Group on Vehicle Lighting (CIE TC4.10) (''Definition of the Vertical Cut-off of Vehicle Headlights'' draft 1993–3–15), and the GTB SSST WG, and reviewed by the Committee, the method for describing the cutoff is as follows.

Scientific studies by Blackwell, Olson, Forbes, Sivak, Flannigan, et.al., have shown that the human eye responds to the logarithm (to base 10) of the gradient of screen luminance. This mathematical expression simulates in the laboratory where human vision perceives the cutoff on a screen during field aiming. A vertical scan of the lower beam pattern at a specified number of degrees to the right or left of the headlamp beam pattern's vertical axis, where the cutoff is located, is taken to gather data on the intensity values. This data is then analyzed using the mathematical expression to determine where the greatest rate of change of illumination occurs; the vertical location of the cutoff is thus defined. For example, a person could use a goniophotometer to record data in small vertical increments at the locations at 2.5 degree left or 2.0 degrees right in order to determine the cutoff location.

For effective field aiming, the cutoff needs to be finitely long so that the person looking at the cutoff has a sufficient cue to find it. This range should extend at least one degree on each side of the specified measurement point of the cutoff and should be approximately straight and horizontal.

The cutoff on the left side of the beam pattern can be achieved by putting more light below the horizontal on the left rather than reducing the intensity of light above the cutoff. This added light provides more illumination to detect objects on the left side of the beam pattern and more uniformity of the total light output from the vehicle. The light above the horizontal would not be decreased. The right side of the beam needs no such enhancement to achieve an adequate gradient for the cutoff. In addition to the above, these changes cause small effects in other areas of the beam that will be addressed below.

To accomplish these purposes, the Agency is adopting the changes to the existing photometric figures in Standard No. 108 for all headlamps designed for visual/optical aiming, as described below. In the final rule, existing photometric Figures 15A, 17A, 27, and 28, have been redesignated respectively Figures 15–1, 17–1, 27–1, and 28–1. Proposed Figures 15B, 17B, 27A and 28A have been adopted as Figures 15–2, 17–2, 27–2 and 28–2. The changes added to the ''-1'' Figures to achieve the ''-2'' Figures are:

(a) Elimination of the 0.5 deg. D–1.5 deg. L to L test points,

(b) Elimination of the 1.0 deg. D–6.0 deg. L test point,

(c) Addition of an 0.86 deg. D–3.5 deg. L test point with intensity requirements of 1800 cd. minimum, and 12000 cd. maximum, and

(d) Addition of an 0.86 deg D–V test point with intensity requirements of 4500cd. minimum,

(e) Addition of an 0.6 deg D–1.3 deg R test point replacing the current test point at 0.5 deg D–1.5 deg R with intensity requirements shown below:

New test point: 0.6 deg. D—1.3 deg. R		Replaced test point: 0.5 deg. D—1.5 deg. R		
Source:		Source:		
Cd minimum	Standard No. 108 figures	Cd minimum	Cd maximum	Standard No. 108 figures
10000	15–2 & 17–2	10000	20000	15–1 & 17–1.
10000	27–2 & 28–2	8000	20000	27–1 & 28–1.

(f) And modification of the 4 degree D–V test point in the Figure 15–2 lower beam maximum candela column from 7000 cd to 10000 cd.

In Figures 27–1 and 28–1, the maximum value at 0.5 degree D–1.5 degrees L is 2500 cd. In Figures 15–1 and 17–1 the maximum value at 0.5 degree D–1.5 degrees L is 3000 cd. The value of the 1.0 degree D–6.0 degrees L test point is 750 cd minimum, and it becomes superfluous because of the additional illumination provided by the new test point specified at 0.86 degree D–3.5 degrees L.

The three test points: 0.86 degree D–3.5 degrees L; 0.86 degree D–V; and 0.6 degree D–1.3 degree R being added have all been the subject of low beam headlamp harmonization activities with GTB, GRE, JASIC, and SAE. A research study, UMTRI 94–27 ''Evaluation of the SAE J1735 Draft Proposal for a Harmonized Low-Beam Headlighting Pattern'' reports that these three test points contribute to better performance of the lower beam headlamp. Incorporation of these test points also contributes to current worldwide harmonization for lower beam headlamps.

In the past there has been one ''seeing light'' test point at 0.5 degree D–1.5 degree R. This is being replaced by three new ''seeing light'' test points: 0.6 degree D–1.3 degrees R; 0.86 degree D–V; and 0.86 degree D–3.5 degree L. The new 0.86 degree D–V test point with the 4500 cd minimum will increase uniformity of the beam pattern below the horizontal line between the high intensity zones on the left and right. The new 0.6 degree D–1.3 degree R test point represents a relocation of a current test point by 0.1 degree D (from 0.5 degree D to 0.6 degree D) and 0.2 degree L (from 1.5 degree R to 1.3 degree R). These changes represent a significant improvement in providing more light to the left side of the beam pattern and will promote harmonization. There is a maximum (20000cd) requirement at the 0.5 degree D–1.5 degree R test point. Because of significantly greater control of minimum and maximum illumination above the horizontal axis, there is no continuing need for a maximum at this location.

The modification of the test point value at 4D–V in Fig. 15–2 from 7000 cd maximum to 10000 cd maximum is based on the substantial increase of light resulting from the test point modifications above which extend the high intensity zone on the right side of the beam pattern to the left side of the beam. The previous test point value at 0.5 degree D–1.5 degree L to L limited not only the light to the left region of the roadway, but also to the foreground area. Directing more light to the left will increase foreground light levels. Studies performed by UMTRI have shown that very high levels of foreground light can depreciate the driver's distance seeing performance. A modest increase in the maximum candela level at this test point from 7000 to 10000 will allow the additional left lane light yet not create undue foreground illumination.

As proposed, the cutoff location is positioned at 0.4 degree below the H–H line for headlamps designed to be aimed using the left side of the beam pattern. This causes the top edge of the main part of the beam pattern on the left to intersect the road surface at approximately 90 m. (300 feet) from the vehicle with headlamps mounted at 635 mm. (25 inches) above the road surface. This distance is increased from present headlamps that are limited by the 0.5 degree D–1.5 degrees L to L test point that exists today. The new test point is taken from SAE J1735.

The specific mathematical expression for identifying the cutoff is: $G = \log E(\alpha) - \log E(\alpha+0.1)$, where ''G'' is the gradient, ''E'' is illumination and ''α'' is the vertical angular position. The maximum value of the gradient ''G'' determines the angular location of the cutoff.

B. Horizontal Aim of Lower Beam

1. Eliminating Horizontal Aim Adjustability

Horizontal aimability is mandatory for mechanically-aimed headlamps under Standard No.108. Because the lower beam of a headlamp designed to conform to Standard No. 108 does not have any visual cues for achieving correct horizontal aim when aimed visually or optically, and because it is not possible to add such visual features without damaging the beam pattern, horizontal aim should be either fixed and nonadjustable, or have a horizontal VHAD.

When horizontal aim is nonadjustable, horizontal aim will not be compromised because most state laws require that headlamps be correctly aimed at the time of the first sale of the vehicle. Generally, the vehicle's manufacturer accepts the responsibility for assuring correct aim of new motor vehicles. Further, proper realignment of front-end components of collision-damaged vehicles will assure correct placement of headlamps and thus maintain proper horizontal aim. Thus, no further specifications are necessary for field use, except to note that horizontal aim may not be adjustable on some lamps marked ''VOR'' or ''VOL'' on the lens.

Standard No. 108 specifies for the lower beam, test points at 15 and 9 degrees left and right, with minimum candela of 850 and 1000 (test points 15 and 9 degrees, Figures 15–1 and 17–1) and 700 and 750 (test points 15 and 9

degrees, Figures 27–1 and 28–1). NHTSA's new Figures 15–2, 17–2, 27–2, and 28–2 increase these values. New test points added at 20 degrees left and right further widen the beam. In addition to the substitution of the above mentioned 0.86D–3.5L test point for the 0.5D–1.5L to L, to facilitate the cutoff, these changes make the new beam pattern less sensitive to horizontal positioning. The modifications and additions that have been adopted are:

9 deg L&R–2 deg D—1250 cd. min.
15 deg L&R–2 deg D—1000 cd. min.
20 deg L&R–4 deg D—300 cd. min.

These locations and values were taken from SAE J1735 which achieves a wider beam pattern as a result of these test points.

2. Horizontal Aim of Lower Beam for Laboratory Photometry tests.

The headlamp shall be mounted onto a fixture which simulates its actual design orientation on any vehicle for which the headlamp is intended. The fixture, with the headlamp installed, shall be attached to the goniometer table in such a way that the fixture alignment axes are coincident with the goniometer axes. Shimming or adjustment of the headlamp's attachment to the test fixture to comply with the photometric requirements is not allowed. If there is a VHAD, the aim of the headlamp shall be adjusted, using the headlamp's horizontal aiming adjusters so the VHAD reads zero. When the headlamp has been aimed vertically, the lamp is ready to be tested for photometric compliance.

C. Vertical Aim of Upper Beam

As with vertical aim of the lower beam, vertical aim of the upper beam requires both a laboratory specification for headlamps before installation and a field specification for headlamps after installation; however, the aim of the upper beam is not nearly as critical as it is for the lower beam. The laboratory specification is being incorporated into Standard No. 108 for visually/optically aimable headlamps. For a headlamp that incorporates both a lower beam and an upper beam, the laboratory procedure and the field procedure for upper beam are not applicable, because the headlamp must be aimed using the lower beam, and, by design, both beams are photometered in that position.

For a headlamp that has only an upper beam, the following apply:

1. Laboratory Specification for Vertical Visual Aim of Upper Beam

The vertical aim of the upper beam shall be adjusted so that the maximum beam intensity is located on the H–H axis.

2. Laboratory Specification for Horizontal Visual Aim of Upper Beam

The horizontal aim of the upper beam shall be adjusted so that the maximum beam intensity is located on the V–V axis unless the headlamp has fixed horizontal aim or a VHAD. In these cases, it shall be mounted onto a fixture which simulates its actual design orientation on any vehicle for which the headlamp is intended. The fixture, with the headlamp installed, shall be attached to the goniometer table in such a way that the fixture alignment axes are coincident with the goniometer axes. Shimming or adjustment of the headlamp's attachment to the test fixture to comply with the photometric requirements is not allowed. If there is a VHAD, the aim of the headlamp shall be adjusted, using the headlamp's horizontal aiming adjusters so that the VHAD reads zero. When the headlamp has been aimed vertically, the lamp is ready to be tested for photometric compliance.

D. Movable Reflector Headlamps

Movable reflector headlamps have a lens and headlamp housing that do not move with respect to the surrounding car structure when headlamps are aimed. Therefore, the range of headlamp aim limits does not need to be as large to cover repairs from vehicle collisions. Requirements for the aiming of movable reflector headlamps have been clarified and expanded to cover headlamps which are visually/optically aimable. The vertical aim range limits will now cover only the full range of pitch on the vehicle on which the headlamp system is installed (full range of pitch on the vehicle is defined in S7.8.3 of Standard No. 108). When horizontal aim is incorporated in a headlamp the horizontal aim range limits will remain 2.5 degrees. Photometry will then be done over the applicable aim limits used for the headlamp system.

E. Marking Requirements

1. Headlamp Optical Axis Mark

The accuracy and reliability of headlamp aim depends upon the correct placement of aiming equipment in front of the vehicle and its headlamps. To assure that this placement is correct and precise, it is necessary for the headlamps to have an indication of the optical axis to act as a geometric reference for measuring distances to the floor and between the headlamps and the vehicle's longitudinal axis. This may be done by a mark on the interior or exterior of the lens, or by a mark or central structure on the interior or exterior of the headlamp. Thus, Standard No. 108 is amended to require that a headlamp have this mark.

While the mark is necessary for visual/optical aim headlamps, it is also desirable for all headlamps because people who aim headlamps use visual/optical aim even though today's headlamps are not designed to be aimed by this method. In the interest of promoting correct aim, this optical axis mark is recommended for all future headlamp designs. This final rule may require changes in headlamps for existing production vehicles, however, it is not intended to be a retroactive requirement. Adequate leadtime is required for implementation, and commenters were invited to discuss leadtime concerns. These concerns and the effective date adopted for the optical axis mark requirement are discussed in the section of this notice called ''Effective Dates''

2. Visual/Optical Aimability Identification Mark

Marking of headlamps would indicate that the lamp is visually/optically aimable according to the means specified in the final rule. Thus, Standard No. 108 will require that the visible part of the lens of each original and replacement equipment headlamp and headlamp lens, and of each original equipment and replacement equipment beam contributor, designed to be visually/optically aimable, manufactured on or after March 1, 1997, the effective date of the final rule, be marked with the symbols ''VOL'', ''VOR'', or ''VO'' either horizontally or vertically. The Committee determined that ''VOR'' and ''VO'' respectively should be the only marking used for all lower beam and upper beam sealed beam and integral beam headlamp types existing before the effective date of the final rule if these types are ever redesigned to be visually/optically aimable. This will ensure that replacement headlamps are identically marked.

NHTSA proposed that manufacturers which introduce new visually/optically aimed headlamp types after the effective date be required to determine the aim method and apply the required marking. This aim method and marking must be followed by all subsequent manufacturers of this headlamp type.

Under the final rule, a lower beam headlamp will be marked ''VOL'' if the manufacturer designs it to be visually/optically aimed using the left side of the lower beam pattern, and ''VOR'' if using the right side. If a sealed beam or an

integral beam headlamp system is currently being produced, the lens of any lamp in such system that is manufactured on or after March 1, 1997, the effective date of the final rule, must be marked ''VOR'', and have the gradient on the right side, if the system is ever redesigned so that its lamps are visually/optically aimable. A headlamp will be marked ''VO'' if it is solely an upper beam headlamp and intended to be visually/optically aimed.

The discussion above relates to the proper marking of existing headlamp designs should their photometric performance be redesigned to be visually/optically aimable as described in this final rule. This does not mean that existing designs can be changed from being mechanically aimable to being visually/optically aimable. It means that existing designs, all of which are mechanically aimable, can be redesigned to include visual/optical aiming in addition to mechanical aim. Mechanical aim must be retained on existing designs to ensure that replacement equipment provide the same performance as original equipment. Thus, any current headlamp design that is modified to include visual/optical aimability must still provide mechanical aimability if that headlamp is intended to be a replacement in vehicles in which the lamp was used before its redesign.

Should a headlamp be redesigned without mechanical aiming features and replace an earlier version of the headlamp, one of two distinct safety consequences will occur, depending on whether the headlamp incorporated an external aiming system or an on-board one. If the headlamp incorporated an external aiming system and if one of the headlamps were replaced with a visual/optical aim only headlamp, the remaining headlamp would not be capable of being aimed with a mechanical aimer. This would occur because the external aimer must be attached to two headlamps, one on each side of the vehicle, in order to measure horizontal aim location. Additionally, the new visual/optical aim headlamp would be capable of being adjusted horizontally because there would be horizontal aiming screws. This is not permitted for visual/optical aim headlamps unless the headlamp has a horizontal VHAD. If the headlamp had an on-board mechanical aiming system, the safety consequence would be the inability to aim correctly a replacement headlamp offering visual/optical aimability only. In this case, the visual/optical headlamp would have horizontal aiming screws, but there would be no valid manner in which to aim the headlamp horizontally unless it continues to be equipped with a horizontal VHAD. For this headlamp, the presumed saving might be the deletion of the vertical VHAD. However, S5.8 *Replacement Equipment* prohibits replacement equipment that differs from original equipment.

In accordance with other marking requirements of Standard No. 108, the letters will be not less than 3 mm high.

III. Allowing Existing Headlamps to Use the New Photometrics

The Committee also decided that the improved photometrics represented by Figures 15–2, 17–2, 27–2, and 28–2 should be available to manufacturers of headlamps that are not visually/optically aimable within the meaning of this rulemaking action, but which presently are designed to meet the photometrics of Figures 15A, 17A, 27 or 28. This raises no safety issues regarding glare or compatibility of replacement equipment, and NHTSA is adopting appropriate amendments to implement the Committee's decision.

In commenting on the proposal for new photometrics, AAMA recommended that the definitions of ''integral beam headlamp'' and ''replaceable bulb headlamp'' be modified to assure that headlamps with removable lenses may be designed to have visual/optical aiming. In its view, visual/optical aiming of headlamps with replaceable lenses is an acceptable alternative to VHAD aiming. The agency concurs, and is amending the definitions in the manner suggested. Even though these specific changes were not proposed, the NPRM did cover integral beam headlamps and replaceable bulb headlamps with fixed lenses the agency sees no substantive distinction that would warrant a separate notice and an opportunity to comment on the inclusion of replaceable lens headlamps in this rulemaking action.

IV. Comments Relating to the NPRM

Stanley, Koito, AAMA, and Wagner called the agency's attention to the inconsistency between the proposed requirement that on-board vehicle headlamp horizontal aiming devices (VHADs) be permanently calibrated, and the lack of a proposal to amend the existing requirement that requires horizontal aiming VHADs to be capable of being recalibrated in the field (S7.8.5.2(a)(2)(iv)).

Permanent calibration was proposed to help prevent further misaim that can occur when vehicle repair technicians attempt to calibrate visually the VHADs of mechanically aimable headlamps that were never intended to be visually aimed. The Committee decided that recalibration should be prohibited because today's lower beam headlamps are not yet capable of being properly visually/optically aimed in the field due to the lack of visual cues in the beam pattern. Visual/optical aim is the only method available in the field today for VHAD calibration and it cannot be performed with any acceptable precision. Thus, there is no safety value from the current requirement for recalibration capability, whereas there would be one for permanent calibration. Permanent calibration retains the precision necessary for aiming; once calibration is lost it cannot be recovered. Maintaining calibration permits the vehicle repair technician to measure physically the mounting locations of the headlamp relative to the vehicle references so that the repaired substructure onto which the headlamp is mounted is restored to near its original alignment. Doing so permits the horizontal VHAD to establish horizontal aim location with reliability and accuracy. For these reasons, NHTSA is adopting S7.8.5.2(c) as proposed and eliminating the inconsistency by deleting the last part of the sentence of S7.8.5.2(a)(2)(iv).

In Stanley's opinion, the formula specified in SAE J1735 ''Harmonized Vehicle Headlamp Performance Requirements'' defining the cut-off of the beam is more practical than the formula that was proposed. This issue was thoroughly discussed by the Committee in its negotiating sessions.

The formula proposed represents the consensus of these meetings including the views of the Japanese Automobiles Standards Internationalization Center (JASIC), which represented the Japanese vehicle and lighting industries. NHTSA affirms its conclusion that the formula is practicable, for the reasons given in both the NPRM and this notice.

One issue for which NHTSA sought answers was whether the optional visual/optical headlamp aiming standard should become mandatory in due course, and, if so, on what date it should become effective. Three comments were received. Wagner believed that the standard should be mandatory, and asked for a 3-year leadtime. Volvo objected to a mandatory requirement. AAMA did not support a mandatory requirement until such time as data are available from field and use experience. On the basis of these comments, the agency concludes that resolution of the issue requires data that is not yet available and is not making the aiming standard mandatory. The

agency may revisit the issue at a later date.

AAMA also suggested minor wording and typographical changes to paragraphs S5.5.8, S7.3.8(b), S7.3.9, S7.4.2(a)(2(i), S10(a), and Figure 26 all of which are adopted.

Proposed paragraphs S7.8.1(b) and S7.8.5.3(f) would require fiduciary markings ''that are visible from the front of the headlamp * * *'' The final rule clarifies that the markings are ''visible from the front of the headlamp when installed on the vehicle,'' implementing a recommendation from AAMA.

V. Comments Not Relating to the NPRM

Several comments concerned issues beyond the scope of the NPRM and the issues that were part of the consensus achieved by the Committee, but NHTSA will comment briefly on them.

Valeo suggested permitting a visual horizontal aim adjustment feature in the beam for visually/optically aimable headlamps, and adding a definition of a ''kink'' in the cut off of the VOL lower beams. In Valeo's opinion, the prohibition of horizontal aim adjustment mechanisms will compel the manufacture of design-specific headlamps for the ECE and U.S. markets. Valeo deems the alternative permitted in the proposal of providing a horizontal VHAD to be considerably more expensive than basic aiming means, but without benefit to the user.

NHTSA notes that the Committee considered features for horizontal visual/optical aiming but none were deemed sufficiently developed and designed to be usable, hence none were included in the NPRM. The agency believes that Valeo's claims of a considerable cost increase are incorrect. Today, with two different beam patterns required for the ECE and U.S. markets, two different headlamp designs are often necessary to meet the needs of each market. With the issuance of this final rule and its visual/optical beam pattern, manufacturers have stated that a beam pattern may be possible that complies with the requirements of both markets. Because ECE headlamps at the current time are required to have both vertical and horizontal aiming screws, an ECE headlamp, to be sold as a visual/optical aim headlamp in the U.S., will need to have a horizontal VHAD. While this would mean a slight cost increase for the ECE headlamp, Valeo will realize overall a significant cost savings from not having to design a separate product for the U.S. market. On balance, the agency estimates that Valeo's cost savings are in the range of $10,000,000 per design for development and tooling costs. The incremental cost of adding a horizontal VHAD is small in comparison to the significant savings afforded by this rulemaking. Additionally, GTB indicates that it will petition NHTSA for rulemaking to include a horizontal aim feature after it has completed research on the nature of horizontal gradients necessary for horizontal visual/optical aim.

Valeo requested clarification of allowance of a re-aim of 0.25 degree in all directions around the test point being measured, even if the visually/optically aimable headlamp does not have a VHAD. Standard No. 108 has always allowed a re-aim of 0.25 degree in any direction for every test point during photometric testing, and will continue to do so. There is no reason not to allow visually/optically aimable headlamps to be similarly reaimable during compliance testing.

Hella and Bosch suggested further aspects to be considered that will be important to the future of harmonization. Both believe that future requirements should be added to permit a visual cue or vertical ''kink'' to be used for horizontal visual/optical aiming of the lower beam. However, as NHTSA has discussed above, this is not technically feasible at this point. Both also suggested that NHTSA allow an increased maximum intensity in upper beam headlamps. Recently NHTSA denied a petition for rulemaking on this subject (61 FR 45359) because of a lack of information supporting an increase beyond the maximum established by NHTSA in 1978. Finally, Hella believes that NHTSA should regulate fog lamps. NHTSA has already asked for comments on this issue (60 FR 54833) and intends to publish a further notice with its views on fog lamps in the near future.

Stanley asked whether the proposal applies to headlamps designed exclusively for motorcycle use. The answer is no; this rulemaking was not intended to address the amiability of motorcycle headlamps.

Calcoast offered a suggestion to improve proper horizontal positioning when photometering a visually/optically aimable headlamp: to add a lens marking identifying the horizontal angle at which the vertical scan is to be performed. NHTSA believes that this marking would add little to assist horizontal positioning, because the cut-off must occur in a 2-degree wide area either to the left or right of the vertical line so that field personnel can identify the cut-off and use it for aiming purposes. It is doubtful that service personnel could accurately and repeatably determine by observation where the cut-off is sharpest and use that as a horizontal aiming reference.

VI. Housekeeping Amendments

In reviewing the text of Standard No. 108 (49 CFR 571.108) as published in the Code of Federal Regulations, revised as of October 1, 1995, NHTSA has discovered several errors that it is taking this opportunity to correct.

The first is a clarification of S5.3.1.1.1 as it relates to the location of clearance lamps. The first sentence of the preceding paragraph, S5.3.1.1, requires, in part, that each lamp ''be located so that it meets the visibility requirements specified in any applicable SAE Standard.'' The second sentence of paragraph S5.3.1.1 states, in part and in essence, that ''no part of a vehicle shall * * * prevent [a clearance lamp] from meeting the photometric output specified in [the] applicable SAE Standard.''

Paragraph S5.3.1.1.1 allows an alternative location for clearance lamps under the conditions expressed in the paragraph and specifies that ''at such a location they need not be visible at 45 degrees inboard.'' The SAE Standard that applies to clearance lamps is J592e, ''Clearance, Side Marker, and Identification Lamps'', July 1972. SAE J592e does not contain installation requirements that specify inboard visibility performance for clearance lamps, within NHTSA's understanding of the first sentence of S5.3.1.1, unlike the standards for turn signal lamps which require ''signals from lamps on both sides of the vehicle [to] be visible through a horizontal angle from 45 deg. to the left for the left lamp to 45 deg to the right for the right lamp.'' (paragraph 5.4.1, SAE Standard J1395 APR85 ''Turn Signal Lamps for use on Motor Vehicles 2032 mm or More in Overall Width''). Instead, SAE J592e specifies photometric performance requirements to be met at test points 45 Left and 45 Right, within the meaning of the second sentence of S5.3.1.1. NHTSA does not wish to confuse the visibility of a lamp with maintenance of its photometric performance as mounted on a vehicle. For this reason, NHTSA believes that S5.3.1.1.1 would be more accurately expressed as specifying that clearance lamps alternatively located ''need not meet photometric requirements at 45 degrees inboard.'' Accordingly this change is made in paragraph S5.3.1.1.1.

In paragraph S5.5.4, the second sentence relating to activation of the high-mounted stop lamp is revised to substitute the word ''vehicle'' for ''passenger car''. This amendment should have been made when Standard No. 108 was amended to require center high-mounted stop lamps on vehicles other than passenger cars.

Paragraph S5.8.10 is revised by correcting its reference to ''S5.7.1'' to ''S5.8.1.'' NHTSA notes that Standard No. 108, as it appears in 49 CFR Parts 400 to 999, revised as of October 1, 1995, contains two paragraphs designated as S7.1 (page 231). The first that is printed specifies headlamp photometric requirements that apply on and after September 1, 1994, while the second contains requirements that apply both before and after that date. Only the first paragraph S7.1 will appear in 49 CFR Parts 400 to 999, revised as of October 1, 1996.

Paragraph S7.2(a) on headlamp lens marking explains that the DOT symbol is the certification required by ''15 U.S.C. 1403.'' This statutory requirement was recodified in 1994 as ''49 U.S.C. 30115'' and the paragraph is being revised to reflect the change. The effective date of December 1, 1989, is also being removed from this paragraph as it is superfluous.

Paragraphs S7.4(i) and S7.5(j) are added to clarify that integral beam headlamps and replaceable bulb headlamps may also incorporate replaceable light sources used for purposes other than headlighting.

Finally, in paragraph S10(a), ''SAE'' is inserted before ''Standard''.

VII. Effective Dates

The amendments that allow headlamps to be visually/optically aimable as an alternative to existing aimability requirements are effective April 1, 1997, approximately 60 days after publication of the final rule in the Federal Register. Because of the desire of all interests affected by the rule that it be issued as soon as practicable to permit an optional means of compliance, it is found for good cause shown that an effective date earlier than 180 days after issuance is in the public interest.

AAMA, Koito, and GTB asked for an additional year of leadtime to comply with requirements that are mandatory within the option, which are fixed calibration and optical axis marking. These requirements were proposed to become effective one year following the September 1 that follows publication of the final rule. Since this final rule is one that is published between September 1, 1996, and August 31, 1997, the effective date for the mandatory requirements is September 1, 1998. NHTSA confirmed in phone conversations that the concern of the commenters is that a late issuance date allowing a lead time of 13 months would be impracticable whereas as earlier one would not. Since this final rule is being published around March 1, the effective date of September 1, 1998, as discussed below for mandatory requirements affords a leadtime of approximately 18 months. NHTSA has concluded that this meets the needs of the commenters and therefore is taking no action on the request.

The amendments to S7.8.1(b) amending the fiducial marking to require an optical axis mark for headlamps that are not visually/optically aimable are effective September 1, 1998, which, as proposed, is September 1 of the year following one year after publication of the final rule. For the same reason, the amendments to S7.8.5.2(c) amending the calibration requirements for the VHAD are also effective September 1, 1998. On the basis of comments demonstrating that it is impracticable to comply with these requirements within 360 days after issuance of the rule, it is found for good cause shown that an effective date for these requirements that is later than 360 days after issuance of the rule is in the public interest.

There is no retroactive effect on existing headlamps or their replacements.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures.

This rulemaking action was not reviewed under Executive Order 12866. Further, it has been determined that the rulemaking action is not significant under Department of Transportation regulatory policies and procedures. The purpose of the rulemaking action is to provide an alternative and more objective means of determining the accuracy of headlamp aim. As an alternative, the provisions are not mandatory unless a manufacturer chooses to install visually/optically aimable headlamps on a motor vehicle that it intends to sell. Because of offsetting benefits to vehicle manufacturers when choosing this option, it is likely that greater benefits than costs will occur. The costs of the final rule are so minimal as not to warrant preparation of a full regulatory evaluation.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The final rule will not have a significant effect upon the environment. The composition of headlamps will not change from those presently in production.

Regulatory Flexibility Act

The agency has also considered the impacts of this rulemaking action in relation to the Regulatory Flexibility Act. For the reasons stated above and below, I certify that this rulemaking action will not have a significant economic impact upon a substantial number of small entities. Accordingly, no regulatory flexibility analysis has been prepared. Manufacturers of motor vehicles and motor vehicle equipment, those affected by the rulemaking action, are generally not small businesses within the meaning of the Regulatory Flexibility Act.

Executive Order 12612 (Federalism)

This rulemaking action has also been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and NHTSA has determined that this rulemaking action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice

The final rule will not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Tires.

In consideration of the foregoing, 49 CFR Part 571 is amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.108 is amended by:

a. Amending Section S4 to add new definitions: ''Cutoff'' and ''Visually/optically aimable headlamp'' in alphabetical order to read as set forth below;

b. revising the definition in S4 of ''Integral beam headlamp'', ''Replaceable bulb headlamp'', and ''Vehicle headlamp aiming device'', to read as set forth below;

c. revising paragraph S5.3.1.1.1 to read as set forth below;

d. revising paragraph S5.5.4 to read as set forth below;

e. revising paragraph S5.5.8 to read as set forth below;

f. revising paragraph S5.8.10 to read as set forth below;

g. revising paragraph S7.2(a) to read as set forth below;

h. revising paragraphs S7.3.2(a)(3); 7.3.3(a); S7.3.4; S7.3.5(a); S7.3.6(a); the first sentence of S7.3.7(b); S7.3.7(d); S7.3.7(h)(1); the last sentence of S7.3.8(b); S7.3.9(a); S7.4(a)(1)(i); S7.4(a)(1)(ii); S7.4(a)(1)(iii); S7.4(a)(2)(i); S7.4(a)(2)(ii); and the first sentence of S7.4 (a)(3) to read as set forth below;

i. adding new paragraph S7.4(i) to read as set forth below:

j. revising paragraphs S7.5(d)(2)(i)(A)(*1*); S7.5(d)(2)(i)(A)(*2*), S7.5(d)(2)(ii)(A)(*1*), S7.5(d)(2)(ii)(A)(*2*), S7.5(d)(3)(i)(A), S7.5(d)(3)(i)(B); S7.5(d)(3)(ii)(A); S7.5(d)(3)(ii)(B); S7.5(e)(2)(i)(A); S7.5(e)(2)(i)(B); S7.5(e)(2)(ii)(A); S7.5(e)(2)(ii)(B); S7.5(e)(3)(i) and S7.5(e)(3)(ii) to read as set forth below;

k. adding new paragraph S7.5(j) to read as set forth below;

l. revising paragraphs; S7.6.2; S7.6.3, S7.8.1; and S7.8.2 to read as set forth below;

m. adding new paragraph S7.8.2.1(c) to read as set forth below;

n. redesignating existing paragraph S7.8.2.2 as S7.8.2.3;

o. adding new paragraph S7.8.2.2 to read as set forth below;

p. revising paragraphs S7.8.4 and S7.8.5 to read as set forth below;

q. redesignating existing paragraph S7.8.5.2(c) as S7.8.5.2(d);

r. adding new paragraphs S7.8.5.2(c) and S7.8.5.3 to read as set forth below;

s. revising the fourth sentence of paragraph S10 (a) and the third sentence of paragraph S10(b) to read as set forth below;

t. redesignating Figures 15A, 17A, 27 and 28, as Figures 15–1, 17–1, 27–1, and 28–1, revising their titles, and republishing them as set forth below;

u. adding new Figures 15–2, 17–2, 27–2, and 28–2, to read as set forth below: and

v. revising Figure 26 to read as set forth below:

§ 571.108 Standard No. 108; Lamps, reflective devices, and associated equipment.

* * * * *

S4 *Definitions.*

* * * * *

Cutoff means a generally horizontal, visual/optical aiming cue in the lower beam that marks a separation between areas of higher and lower luminance.

* * * * *

Integral beam headlamp means a headlamp (other than a standardized sealed beam headlamp designed to conform to paragraph S7.3 or a replaceable bulb headlamp designed to conform to paragraph S7.5) comprising an integral and indivisible optical assembly including lens, reflector, and light source, except that a headlamp conforming to paragraph S7.8.5.2 or paragraph S7.8.5.3 may have a lens designed to be replaceable.

* * * * *

Replaceable bulb headlamp means a headlamp comprising a bonded lens and reflector assembly and one or two replaceable headlamp light sources, except that a headlamp conforming to paragraph S7.8.5.2 or paragraph S7.8.5.3 may have a lens designed to be replaceable.

* * * * *

Vehicle headlamp aiming device or VHAD means motor vehicle equipment, installed either on a vehicle or headlamp, which is used for determining the horizontal or vertical aim, or both the vertical and horizontal aim of the headlamp.

* * * * *

Visually/optically aimable headlamp means a headlamp which is designed to be visually/optically aimable in accordance with the requirements of paragraph S7.8.5.3 of this standard.

* * * * *

S5 *Requirements.*

* * * * *

S5.3.1.1.1 Clearance lamps may be located at a location other than on the front and rear if necessary to indicate the overall width of a vehicle, or for protection from damage during normal operation of the vehicle, and at such a location they need not meet the photometric output at any test point that is 45 degrees inboard.

* * * * *

S5.5.4 The stop lamps on each vehicle shall be activated upon application of the service brakes. The high-mounted stop lamp on each vehicle shall be activated only upon application of the service brakes.

* * * * *

S5.5.8 On a motor vehicle equipped with a headlighting system designed to conform to the photometric requirements of Figure 15–1 or Figure 15–2, the lamps marked ''L'' or ''LF'' may be wired to remain permanently activated when the lamps marked ''U'' or ''UF'' are activated. On a motor vehicle equipped with an Integral Beam headlighting system meeting the photometric requirements of paragraph S7.4(a)(1)(ii), the lower beam headlamps shall be wired to remain permanently activated when the upper beam headlamps are activated. On a motor vehicle equipped with a headlighting system designed to conform to the requirements of Figure 17–1 or Figure 17–2, a lower beam light source may be wired to remain activated when an upper beam light source is activated if the lower beam light source contributes to compliance of the headlighting system with the upper beam requirements of Figure 17–1 or Figure 17–2.

* * * * *

S5.8.10 Unless otherwise specified in this standard, each lamp, reflective device, or item of associated equipment to which paragraph S5.8.1 applies may be labeled with the symbol DOT, which shall constitute a certification that it conforms to applicable Federal motor vehicle safety standards.

* * * * *

S7 *Headlighting requirements.*

* * * * *

S7.2(a) The lens of each original and replacement equipment headlamp, and of each original equipment and replacement equipment beam contributor shall be marked with the symbol ''DOT'' either horizontally or vertically which shall constitute the certification required by 49 U.S.C. 30115.

* * * * *

S7.3.2 *Type A headlighting system.*

* * *

(a) * * *

(3) In paragraphs 4.5.2 and 5.1.6, the words ''Figure 28–1 or 28–2 of Motor Vehicle Safety Standard No. 108'' are substituted for ''Table 3.''

* * * * *

S7.3.3 *Type B headlighting system.*

* * *

(a) The requirements of paragraph S7.3.2 (a) through (c), except that the words ''Figure 27–1 or Figure 27–2'' are substituted for ''Table 3'' in paragraph S7.3.2(a)(3).

* * * * *

S7.3.4 *Type C headlighting system.* A Type C headlighting system consists of two Type 1C1 and two Type 2C1 headlamps and associated hardware, which are designed to conform to the requirements of paragraph S7.3.2 (a) through (d), except that the words ''Figure 28–1 or Figure 28–2'' are substituted for ''Table 3'' in paragraph S7.3.2(a)(3).

S7.3.5 *Type D headlighting system.* (a) A Type D headlighting system consists of two Type 2D1 headlamps and associated hardware, which are designed to conform to the requirements

of paragraph S7.3.2 (a) through (c), except that the words ''Figure 27–1 or Figure 27–1'' are substituted for ''Table 3'' in paragraph S7.3.2(a)(3).

* * * * *

S7.3.6 *Type E headlighting system.* (a) A Type E headlighting system consists of two Type 2E1 headlamps and associated hardware, which are designed to conform to the requirements of paragraph S7.3.2 (a) through (c), except that the words ''Figure 27–1 or Figure 27–1'' are substituted for ''Table 3'' in paragraph S7.3.2(a)(3).

* * * * *

S7.3.7 *Type F headlighting system.* * * *

(b) The photometric requirements of Figure 15–1 or Figure 15–2 of this standard. * * *

* * * * *

(d) When tested in accordance with section (c), the mounted assembly (either Type UF or Type LF headlamps, respective mounting ring, aiming ring, and aim adjustment mechanism) shall be designed to conform to the requirements of Figure 15–1 or Figure 15–2 for upper or lower beams respectively without reaim when any conforming Type UF or LF headlamp is tested and replaced by another conforming headlamp of the same Type.

* * * * *

(h) * * *

(1) The assembly (consisting of the Type UF and LF headlamps, mounting rings, the aiming/seating rings, and aim adjustment mechanism) shall be designed to conform to the test points of Figure 15–1 or Figure 15–2.

* * * * *

S7.3.8 *Type G headlighting system.* * * *

* * * * *

(b) * * * In paragraph 4.5.2, the words ''either Figure 28–1, or Figure 28–2'' are substituted for ''Table 3''.

* * * * *

S7.3.9 *Type H headlighting system.* * * *

(a) Paragraphs S7.3.8 (a) through (d) except that in paragraph S7.3.8(b), the words ''Figure 27–1 or Figure 27–2'' are substituted for ''Table 3.''

* * * * *

S7.4 *Integral beam headlighting systems.* * * *

(a) * * *

(1) * * *

(i) Figure 15–1 or Figure 15–2; or

(ii) Figure 15–1 or Figure 15–2, except that the upper beam test value at 2.5 D–V and 2.5D–12R and 12L, shall apply to the lower beam headlamp and not to the upper beam headlamp, and the upper beam test point value at 1.5D–9R and 9L shall be 1000; or

(iii) Figure 28–1 or Figure 28–2.

(2) * * *

(i) Figure 17–1 or Figure 17–2; or

(ii) Figure 27–1 or Figure 27–2.

(3) In a system in which there is more than one beam contributor providing a lower beam, and/or more than one beam contributor providing an upper beam, each beam contributor in the system shall be designed to meet only the photometric performance requirements of Figure 15–1 or Figure 15–2 based upon the following mathematical expression: conforming test point value = 2 (Figure 15–1 or Figure15–2 test point value)/total number of lower or upper beam contributors for the vehicle, as appropriate. * * *

* * * * *

(i) An integral beam headlamp may incorporate replaceable light sources that are used for purposes other than headlighting.

S7.5 *Replaceable bulb headlamp systems.* * * *

* * * * *

(d) * * *

* * * * *

(2) * * *

(i) * * *

(A) * * *

(*1*) The lower beam requirements of Figure 27–1 or Figure 27–2, or Figure 17–1 or Figure 17–2, if the light sources in the headlamp system are any combination of dual filament replaceable light sources other than Type HB2; or

(*2*) The lower beam requirements of Figure 17–1 or Figure17–2 if the light sources are Type HB2, or any dual filament replaceable light sources that include Type HB2; or

* * * * *

(ii) * * *

(A) * * *

(*1*) The upper beam requirements of Figure 27–1 or Figure 27–2, or Figure 17–1 or Figure 17–2 if the light sources in the headlamp system are any combination of dual filament replaceable light sources that include Type HB2, or

(*2*) The upper beam requirements of figure 17–1 or Figure 17–2 if the light sources are type HB2, or any combination of replaceable light sources that include Type HB2; or

* * * * *

(3) * * *

(i) * * *

(A) The lower beam requirements of Figure 27–1 or Figure 27–2, or Figure 15–1 or Figure 15–2 if the light sources in the headlamp system are any combination of dual filament light sources other than Type HB2; or

(B) The lower beam requirements of Figure 15–1 or Figure 15–2 if the light sources are Type HB2, or dual filament light sources other than Type HB1 and HB5. The lens of each such headlamp shall be marked with the letter ''L''.

(ii) * * *

(A) The upper beam requirements of Figure 27–1 or Figure 27–2, of Figure 15–1 or Figure 15–2 if the light sources in the headlamp system are any combination of dual filament light sources other than Type HB2; or

(B) The upper beam requirements of Figure 15–1 or Figure 15–2 if the light sources are Type HB2, or dual filament light sources other tha Type HB1 and Type HB5. The lens of each such headlamp shall be marked with the letter ''u''.

(e) * * *

* * * * *

(2) * * *

(i) * * *

(A) By the outboard light source (or the uppermost if arranged vertically) designed to conform to the lower beam requirements of Figure 17–1 or Figure 17–2; or

(B) By both light sources, designed to conform to the lower beam requirements of Figure 17–1 or Figure 17–2.

(ii) * * *

(A) By the inboard light source (or the lower one if arranged vertically) designed to conform to the upper beam requirements of Figure 17–1 or Figure 17–2; or

(B) By both light sources, designed to conform to the upper beam requirements of Figure 17–1 or Figure 17–2.

(3) * * *

(i) The lower beam shall be produced by the outboard lamp (or upper one if arranged vertically), designed to conform to the lower beam requirements of Figure 15–1 or Figure 15–2. The lens of each headlamp shall be permanently marked with the letter ''L''.

(ii) The upper beam shall be produced by the inboard lamp (or lower one of arranged vertically), designed to conform to the upper beam requirements of Figure 15–1 or Figure 15–2. The lens of each headlamp shall be permanently marked with the letter ''U''.

* * * * *

(j) A replaceable bulb headlighting system may incorporate replaceable light sources that are used for purposes other than headlighting.

* * * * *

S7.6.2 In a combination headlighting system consisting of two headlamps, each headlamp shall be designed to conform to Figure 17–1 or Figure 17–2 and shall be a combination of two different headlamps chosen from the

following types: a Type F headlamp, an integral beam headlamp, and a replaceable bulb headlamp.

* * * * *

S7.6.3 In a combination headlighting system consisting of four headlamps, each headlamp shall be designed to conform to Figure 15–1 or Figure 15–2, or if an integral beam headlamp in which there is more than one beam contributor, designed to conform to Figure 15–1 or Figure 15–2 in the manner required by S7.4(a)(3) of this standard.

* * * * *

S7.8.1 (a) Each headlamp or beam contributor that is not visually/optically aimable in accordance with S7.8.5.3 of this standard shall be equipped with fiducial marks, aiming pads, or similar references of sufficient detail and accuracy, for determination of an appropriate vehicle plane to be used with the photometric procedures of SAE J1383 APR85 for correct alignment with the photometer axis when being tested for photometric compliance, and to serve for the aiming reference when the headlamp or beam contributor is installed on a motor vehicle. The fiducial marks, aiming pads, or similar references are protrusions, bubble vials, holes, indentations, ridges, scribed lines, or other readily identifiable marks established and described by the vehicle or headlamp manufacturer.

(b) Each motor vehicle manufactured on and after September 1, 1998, shall be equipped with headlamps or beam contributors which have a mark or markings that are visible from the front of the headlamp when installed on the vehicle to identify the optical axis of the headlamp to assure proper horizontal and vertical alignment of the aiming screen or optical aiming equipment. The manufacturer is free to choose the design of the mark or markings. The mark or markings may be on the interior or exterior of the lens or indicated by a mark or central structure on the interior or exterior of the headlamp.

(c) Each headlamp that is visually/optically aimable in accordance with S7.8.5.3 of this standard shall be marked in accordance with S7.8.5.3(f).

S7.8.2 Except as provided in this paragraph, each headlamp shall be installed on a motor vehicle with a mounting and aiming mechanism that allows aim inspection and adjustment of both vertical and horizontal aim, and is accessible for those purposes without removal of any vehicle parts, except for protective covers removable without the use of tools.

S7.8.2.1

* * * * *

(c) A visually/optically aimable headlamp that has a lower beam shall not have a horizontal adjustment mechanism unless such mechanism meets the requirements of paragraph S7.8.5.2 of this standard.

S7.8.2.2 If the headlamp is aimed by moving the reflector relative to the lens and headlamp housing, or vice versa, it shall:

(a) allow movement of the headlamp system, when tested in the laboratory, to be not less than the full range of pitch on the vehicle on which the headlamp system is installed and for the horizontal aim range limits of S7.8.4,

(b) Conform with the photometrics applicable to it with the lens at any position relative to the reflector within the range limits as specified in S7.8.2.2(a),

(c) Be exempted from the aim range limits for testing in a laboratory in S7.8.3, and

(d) Be exempted from S7.8.4 if it is visually/optically aimable and has fixed horizontal aim.

* * * * *

S7.8.4 When a headlamp system is tested in a laboratory, the range of its horizontal aim shall be not less that +/-2.5 degrees from the nominal correct aim position for the intended vehicle application.

S7.8.5 When activated in a steady-burning state, headlamps shall not have any styling ornament or other feature, such as a translucent cover or grill, in front of the lens. Headlamp wipers may be used in front of the lens provided that the headlamp system is designed to conform with all applicable photometric requirements with the wiper stopped in any position in front of the lens. When a headlamp system is installed on a motor vehicle, it shall be aimable with at least one of the following: An externally applied aiming device, as specified in S7.8.5.1; an on-vehicle headlamp aiming device installed by the vehicle or lamp manufacturer, as specified in S7.8.5.2; or by visual/optical means, as specified in S7.8.5.3.

* * * * *

S7.8.5.2

* * * * *

(c) Each headlamp equipped with a VHAD that is manufactured for use on motor vehicles manufactured on or after September 1,1998, shall be manufactured with its calibration permanently fixed by its manufacturer. Calibration in this case means the process of accurately aligning the geometry of the VHAD devices with the beam pattern for the purposes of compliance with the standard.

* * * * *

S7.8.5.3 *Visual/optical aiming.* Each visually/optically aimable headlamp shall be designed to conform to the following requirements:

(a) *Vertical aim, lower beam.* Each lower beam headlamp shall have a cutoff in the beam pattern. It may be either on the left side or the right side of the optical axis, but once chosen for a particular headlamp system's design, the side chosen for the cutoff shall not be changed for any headlamps intended to be used as replacements for those system's headlamps.

(1) *Vertical position of cutoff.* The headlamp shall be aimed vertically so that the cutoff is on the left side, at 0.4 degree down from the H–H line, or on the right side, at the H–H line.

(2) *Vertical gradient.* The gradient of the cutoff measured at either 2.5 degrees L or 2.0 degrees R shall be not less than 0.13 based on the procedure of S7.8.5.3, paragraph (a)(5).

(3) *Horizontal position of the cutoff.* The width shall be not less than two degrees, with not less than two degrees of its actual width centered at either 2.5 degrees L, or 2.0 degrees R.

(4) *Maximum inclination of cutoff.* The vertical location of the highest gradient at the ends of the minimum width shall be within +/-0.2 degree of the vertical location of the maximum gradient measured at the appropriate vertical line (at either 2.5 degrees L for a left side cutoff, or 2.0 degrees R for a right side cutoff.)

(5) *Measuring the cutoff parameter.* (i) The headlamp shall be mounted on a fixture which simulates its actual design location on any vehicle for which the headlamp is intended. The fixture, with the headlamp installed shall be attached to the goniometer table in such a way that the fixture alignment axes are coincident with the goniometer axes. The headlamp shall be energized at the specified test voltage.

(ii) The headlamp beam pattern shall be aimed with the cutoff at the H-H axis. There shall be no adjustment, shimming, or modification of the horizontal axis of the headlamp or test fixture, unless the headlamp is equipped with a VHAD. In this case the VHAD shall be adjusted to zero.

(iii) A vertical scan of the beam pattern shall be conducted for a headlamp with a left side gradient by aligning the goniometer on a vertical line at 2.5 degrees L and scanning from 1.5 degrees U to 1.5 degrees D. For a headlamp with a right side gradient, a vertical scan of the beam pattern shall be conducted by aligning the goniometer on a vertical line at 2.0 degrees R and scanning from 1.5 degrees U to 1.5 degrees D.

(iv) Determine the maximum gradient within the range of the scan by using the formula: G = log E(*a*)-*log E(a*+0.1), where ''G'' is the gradient, ''E'' is illumination and ''*a*'' is vertical angular position. The maximum value of the gradient ''G'' determines the vertical angular location of the cutoff. Perform vertical scans at 1.0 degree L and R of the measurement point of the maximum gradient to determine the inclination.

(b) *Horizontal aim, lower beam.* There shall be no adjustment of horizontal aim unless the headlamp is equipped with a horizontal VHAD. If the headlamp has a VHAD, it shall be set to zero.

(c) *Vertical aim, upper beam.* (1) If the upper beam is combined in a headlamp with a lower beam, the vertical aim of the upper beam shall not be changed from the aim set using the procedures of paragraphs S7.8.5.3(a) and (b) used for the lower beam.

(2) If the upper beam is not combined in a headlamp with a lower beam, the vertical aim of the upper beam shall be adjusted so that the maximum beam intensity is located on the H-H axis.

(d) *Horizontal aim, upper beam.* (1) If the upper beam is combined in a headlamp with a lower beam, the horizontal aim of the upper beam shall not be changed from the aim set using the procedures of paragraphs S7.8.5.3 (a) and (b) used for the lower beam.

(2) If the upper beam is not combined in a headlamp with the lower beam and has fixed horizontal aim or has a horizontal VHAD, then the headlamp shall be mounted on a fixture which simulates its actual design location on any vehicle for which the headlamp is intended. The fixture, with the headlamp installed shall be attached to the goniometer table in such a way that the fixture alignment axes are coincident with the goniometer axes. The headlamp shall be energized at 12.8 ± 0.20 mV. There shall be no adjustment, shimming, or modification of the horizontal axis of the headlamp or test fixture, unless the headlamp is equipped with a VHAD. In this case the VHAD shall be adjusted to zero.

(3) If the upper beam is not combined in a headlamp with a lower beam, and it does not have a VHAD, the horizontal aim of the upper beam shall be adjusted so that the maximium beam intensity is located on the V-V axis.

(e) *Photometric Requirements and Measurement.* (1) Instead of being designed to conform to the photometric requirements of Figures 15–1, 17–1, 27–1 or 28–1, a visually/optically aimable headlamp shall be designed to conform to the requirements of Figures 15–2, 17–2, 27–2 or 28–2 when tested in accordance with paragraph (2) and SAE J575 DEC88, with the distance from the photometer to the headlamp no less than 18.3 m.

(2) If the lower beam has a left side cutoff, reaim the headlamp vertically to place the maximum gradient found in paragraph S7.8.5.3 at 0.4 degree below the H-H line. For a headlamp with a lower beam right side cutoff, place the maximum gradient found in paragraph S7.8.5.3 at the H–H line. For an upper beam, the headlamp would already be aimed at the end of the procedure found in paragraph S7.8.5.3. A 0.25 degree reaim is permitted in any direction at any test point.

(f) *Marking*—(1) *Headlamp optical axis mark.* There shall be a mark or markings identifying the optical axis of the headlamp visible from the front of the headlamp when installed on the vehicle, to assure proper horizontal and vertical alignment of the aiming screen or optical aiming equipment with the headlamp being aimed. The manufacturer is free to choose the design of the mark or markings. The mark or markings may be on the interior or exterior of the lens or indicated by a mark or central structure on the interior or exterior of the headlamp.

(2) *Visual/optical aimability identification marks.* (i) The lens of a lower beam headlamp shall be marked ''VOL'' if the headlamp is intended to be visually/optically aimed using the left side of the lower beam pattern.

(ii) The lens of a lower beam headlamp shall be marked ''VOR'' if the headlamp is intended to be visually/optically aimed using the right side of the lower beam pattern.

(iii) The lens of each sealed beam or integral beam headlamp shall be marked ''VOR'' if the headlamp is of a type that was manufactured before May 1, 1997, and if such headlamp type has been redesigned since then to be visually/optically aimable.

(iv) The lens of a headlamp that is solely an upper beam headlamp and intended to be visually/optically aimed using the upper beam shall be marked ''VO''.

(v) Each letter used in marking according to this paragraph shall be not less than 3 mm. high.

* * * * *

S10. *Simultaneous aim photometry tests.*

(a) *Type F headlamp systems.* * * * Photometry measurements of the UF photometry unit shall be completed using the aiming plane so established, and the procedures of section 4.1 and 4.1.4 Standard J1383 APR85, and Figure 15–1 or Figure 15–2. * * *

(b) Integral beam headlamp systems. * * * Photometric compliance of the lower beam shall be determined with all lower beam contributors illuminated and in accordance with sections 4.1 and 4.1.6 of SAE Standard J1383 APR85, and Figure 15–1 or Figure 15–2. * * *

BILLING CODE 4910–59–P

FIGURE 15-1

PHOTOMETRIC TEST POINT VALUES

FOR MECHANICAL AIM HEADLIGHTING SYSTEMS

UPPER BEAM

Test Points (degrees)	Candela maximum	Candela minimum
2U-V	--	1,500
1U-3L and 3R	--	5,000
H-V	70,000	40,000
H-3L and 3R	--	15,000
H-6L and 6R	--	5,000
H-9L and 9R	--	3,000
H-12L and 12R	--	1,500
1.5D-V	--	5,000
1.5D-9L and 9R	--	2,000
2.5D-V	--	2,500
2.5D-12L and 12R	--	1,000
4D-V	5,000	--

LOWER BEAM

Test Points (degrees)	Candela maximum	Candela minimum
10U-90U	125	--
4U-8L and 8R	--	64
2U-4L	--	135
1.5U-1R to 3R	--	200
1.5U-1R to R	1,400	--
1U-1.5L to L	700	--
0.5U-1.5L to L	1,000	--
0.5U-1R to 3R	2,700	500
H-4L	--	135
H-8L	--	64
0.5D-1.5L to L	3,000	--
0.5D-1.5R	20,000	10,000
1D-6L	--	1,000
1.5D-2R	--	15,000
1.5D-9L and 9R	--	1,000
2D-15L and 15R	--	850
4D-4R	12,500	--
4D-V	7,000	--
H-V	5,000	--

FIGURE 15-2

PHOTOMETRIC TEST POINT VALUES

FOR VISUAL/OPTICAL AIM HEADLIGHTING SYSTEMS

UPPER BEAM

Test Points (degrees)	Candela maximum	Candela minimum
2U-V	--	1,500
1U-3L and 3R	--	5,000
H-V	70,000	40,000
H-3L and 3R	--	15,000
H-6L and 6R	--	5,000
H-9L and 9R	--	3,000
H-12L and 12R	--	1,500
1.5D-V	--	5,000
1.5D-9L and 9R	--	2,000
2.5D-V	--	2,500
2.5D-12L and 12R	--	1,000
4D-V	5,000	--

LOWER BEAM

Test Points (degrees)	Candela maximum	Candela minimum
10U-90U	125	--
4U-8L and 8R	--	64
2U-4L	--	135
1.5U-1R to 3R	--	200
1.5U-1R to R	1,400	--
1U-1.5L to L	700	--
0.5U-1.5L to L	1,000	--
0.5U-1R to 3R	2,700	500
H-V	5,000	--
H-4L	--	135
H-8L	--	64
0.6D-1.3R	--	10,000
0.86D-V	--	4,500
0.86D-3.5L	12,000	1,800
1.5D-2R	--	15,000
2D-9L and 9R	--	1,250
2D-15L and 15R	--	1,000
4D-V	10,000	--
4D-4R	12,500	--
4D-20L and 20R	--	300

FIGURE 17-1

PHOTOMETRIC TEST POINT VALUES

FOR MECHANICAL AIM HEADLIGHTING SYSTEMS

UPPER BEAM

Test Points (degrees)	Candela maximum	Candela minimum
2U-V	--	1,500
1U-3L and 3R	--	5,000
H-V	75,000	40,000
H-3L and 3R	--	15,000
H-6L and 6R	--	5,000
H-9L and 9R	--	3,000
H-12L and 12R	--	1,500
1.5D-V	--	5,000
1.5D-9L and 9R	--	2,000
2.5D-V	--	2,500
2.5D-12L and 12R	--	1,000
4D-V	12,000	--

LOWER BEAM

Test Points (degrees)	Candela maximum	Candela minimum
10U-90U	125	--
4U-8L and 8R	--	64
2U-4L	--	135
1.5U-1R to 3R	--	200
1.5U-1R to R	1,400	--
1U-1.5L to L	700	--
0.5U-1.5L to L	1,000	--
0.5U-1R to 3R	2,700	500
H-4L	--	135
H-8L	--	64
0.5D-10.5L to L	3,000	--
0.5D-1.5R	20,000	10,000
1D-6L	--	1,000
1.5D-2R	--	15,000
1.5D-9L and 9R	--	1,000
2D-15L and 15R	--	850
4D-4R	12,500	--

FIGURE 17-2

PHOTOMETRIC TEST POINT VALUES

FOR VISUAL/OPTICAL AIM HEADLIGHTING SYSTEMS

UPPER BEAM

Test Points (degrees)	Candela maximum	Candela minimum
2U-V	--	1,500
1U-3L and 3R	--	5,000
H-V	75,000	40,000
H-3L and 3R	--	15,000
H-6L and 6R	--	5,000
H-9L and 9R	--	3,000
H-12L and 12R	--	1,500
1.5D-V	--	5,000
1.5D-9L and 9R	--	2,000
2.5D-V	--	2,500
2.5D-12L and 12R	--	1,000
4D-V	12,000	--

LOWER BEAM

Test Points (degrees)	Candela maximum	Candela minimum
10U-90U	125	--
4U-8L and 8R	--	64
2U-4L	--	135
1.5U-1R to 3R	--	200
1.5U-1R to R	1,400	--
1U-1.5L to L	700	--
0.5U-1.5L to L	1,000	--
0.5U-1R to 3R	2,700	500
H-4L	--	135
H-8L	--	64
0.6D-1.3R	--	10,000
0.86D-V	--	4,500
0.86D-3.5L	12,000	1800
1.5D-2R	--	15,000
2D-9L and 9R	--	1,250
2D-15L and 15R	--	1,000
4D-4R	12,500	--
4D-20L and 20R	--	300

FIGURE 26

TABLE FOR DETERMINING THE PHOTOMETRIC REQUIREMENTS OF REPLACEABLE BULB HEADLAMP SYSTEMS

	Any dual filament type other than HB2 used alone or with another dual filament type other than HB2, filed in Docket No. 93-11	HB2 or any single filament type used alone or with any other single or dual filament type, filed in Docket No. 93-11
Four-Headlamp Systems	Fig. 27-1 or 27-2 Fig. 15-1 or 15-2	Fig. 15-1 or 15-2
Two-Headlamp Systems	Fig. 27-1 or 27-2 Fig. 17-1 or 17-2	Fig. 17-1 or 17-2

FIGURE 27-1

PHOTOMETRIC TEST POINT VALUES

FOR MECHANICAL AIM HEADLIGHTING SYSTEMS

UPPER BEAM

Test Points (degrees)	Candela maximum	Candela minimum
2U-V	--	1,000
1U-3L and 3R	--	2,000
H-V	75,000	20,000
H-3L and 3R	--	10,000
H-6L and 6R	--	3,250
H-9L and 9R	--	1,500
H-12L and 12R	--	750
1.5D-V	--	5,000
1.5D-9L and 9R	--	1,500
2.5D-V	--	2,500
2.5D-12L and 12R	--	750
4D-V	5,000	--

LOWER BEAM

Test Points (degrees)	Candela maximum	Candela minimum
10U-90U	125	--
4U-8L and 8R	--	64
2U-4L	--	135
1.5U-1R to 3R	--	200
1.5U-1R to R	1,400	--
1U-1.5L to L	700	--
0.5U-1.5L to L	1,000	--
0.5U-1R to 3R	2,700	500
H-4L	--	135
H-8L	--	64
0.5D-1.5L toL	2,500	--
0.5D-1.5R	20,000	8,000
1D-6L	--	750
1.5D-2R	--	15,000
1.5D-9L and 9R	--	750
2D-15L and 15R	--	700
4D-4R	12,500	--

FIGURE 27-2

PHOTOMETRIC TEST POINT VALUES

FOR VISUAL/OPTICAL AIM HEADLIGHTING SYSTEMS

UPPER BEAM

Test Points (degrees)	Candela maximum	Candela minimum
2U-V	--	1,000
1U-3L and 3R	--	2,000
H-V	75,000	20,000
H-3L and 3R	--	10,000
H-6L and 6R	--	3,250
H-9L and 9R	--	1,500
H-12L and 12R	--	750
1.5D-V	--	5,000
1.5D-9L and 9R	--	1,500
2.5D-V	--	2,500
2.5D-12L and 12R	--	750
4D-V	5,000	--

LOWER BEAM

Test Points (degrees)	Candela maximum	Candela minimum
10U-90U	125	--
4U-8L and 8R	--	64
2U-4L	--	135
1.5U-1R to 3R	--	200
1.5U-1R to R	1,400	--
1U-1.5L to L	700	--
0.5U-1.5L to L	1,000	--
0.5U-1R to 3R	2,700	500
H-4L	--	135
H-8L	--	64
0.6D-1.3R	--	10,000
0.86D-V	--	4,500
0.86D-3.5L	12,000	1,800
1.5D-2R	--	15,000
2D-9L and 9R	--	1,250
2D-15L and 15R	--	1,000
4D-4R	12,500	--
4D-20L and 20R	--	300

FIGURE 28-1

PHOTOMETRIC TEST POINT VALUES

FOR MECHANICAL AIM HEADLIGHTING SYSTEMS

UPPER BEAM

Headlamp Type	1A1, 1C1, and	1G1	2A1, 2C1, and	2G1
Test Points (degrees)	Candela maximum	Candela minimum	Candela maximum	Candela minimum
2U-V	--	750	--	750
1U-3L and 3R	--	3,000	--	2,000
H-V	60,000	18,000	15,000	7,000
H-3L and 3R	--	12,000	--	3,000
H-6L and 6R	--	3,000	--	2,000
H-9L and 9R	--	2,000	--	1,000
H-12L and 12R	--	750	--	750
1.5D-V	--	3,000	--	2,000
1.5D-9L and 9R	--	1,250	--	750
2.5D-V	--	1,500	--	1,000
2.5D-12L and 12R	--	600	--	400
4D-V	5,000	--	2,500	--

LOWER BEAM

Headlamp Type	2A1, 2C1, and 2G1	
Test Points (degrees)	Candela maximum	Candela minimum
10U-90U	125	--
4U-8L and 8R	--	64
2U-4L	--	135
1.5U-1R to 3R	--	200
1.5U-1R to R	1,400	--
1U-1.5L to L	700	--
0.5U-1.5L to L	1,000	--
0.5U-1R to 3R	2,700	500
H-4L	--	135
H-8L	--	64
0.5D-1.5L to L	2,500	--
0.5D-1.5R	20,000	8,000
1D-6L	--	750
1.5D-2R	--	15,000
1.5D-9L and 9R	--	750
2D-15L and 15R	--	700
4D-4R	12,500	--

FIGURE 28-2

PHOTOMETRIC TEST POINT VALUES

FOR VISUAL/OPTICAL AIM HEADLIGHTING SYSTEMS

UPPER BEAM

Headlamp Type	1A1, 1C1, and	1G1	2A1, 2C1, and	2G1
Test Points (degrees)	Candela maximum	Candela minimum	Candela maximum	Candela minimum
2U-V	–	750	–	750
1U-3L and 3R	–	3,000	–	2,000
H-V	60,000	18,000	15,000	7,000
H-3L and 3R	–	12,000	–	3,000
H-6L and 6R	–	3,000	–	2,000
H-9L and 9R	–	2,000	–	1,000
H-12L and 12R	–	750	–	750
1.5D-V	–	3,000	–	2,000
1.5D-9L and 9R	–	1,250	–	750
2.5D-V	–	1,500	–	1,000
2.5D-12L and 12R	–	600	–	400
4D-V	5,000	–	2,500	–

LOWER BEAM

Headlamp Type	2A1, 2C1, and	2G1
Test Points (degrees)	Candela maximum	Candela minimum
10U-90U	125	–
4U-8L and 8R	–	64
2U-4L	–	135
1.5U-1R to 3R	–	200
1.5U-1R to R	1,400	–
1U-1.5L to L	700	–
0.5U-1.5L to L	1,000	–
0.5U-1R to 3R	2,700	500
H-4L	–	135
H-8L	–	64
0.6D-1.3R	–	10,000
0.86D-V	–	4,500
0.86D-3.5L	12,000	1,800
1.5D-2R	–	15,000
2D-9L and 9R	–	1250
2D-15L and 15R	–	1000
4D-4R	12,500	–
4D-20L and 20R	–	300

Issued on March 4, 1997.

Ricardo Martinez,

Administrator.

[FR Doc. 97–5723 Filed 3–7–97; 8:45 am]

BILLING CODE 4910–59–C

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC85

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Cactus Ferruginous Pygmy-Owl in Arizona

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) determines endangered status for the cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*) in Arizona, pursuant to the Endangered Species Act of 1973, as amended (Act). The Service also determines that the cactus ferruginous pygmy-owl population in Texas does not warrant listing as a threatened species and is not finalizing that portion of the proposal. The Service originally proposed to list the cactus ferruginous pygmy-owl as endangered in Arizona with critical habitat, and threatened in Texas without critical habitat.

New information was received during comment periods indicating that population levels are higher in Arizona and Texas than was known at the time of the proposed rule. This information has been considered in making this final determination. However, the Service still determines that the Arizona population warrants endangered status. Conversely, the new information indicates that listing the species as threatened in Texas is not warranted. This rule implements the Federal protection and recovery provisions afforded by the Act for the Arizona population of this subspecies.

EFFECTIVE DATE: April 9, 1997.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Arizona Ecological Services Field Office, 2321 West Royal Palm Road, Suite 103, Phoenix, Arizona, 85021–4951.

FOR FURTHER INFORMATION CONTACT: For Arizona, Mary E. Richardson, Arizona Ecological Services Field Office (see **ADDRESSES** section) (telephone 602/640–2720; facsimile 602/640–2730). For Texas, William Seawell, U.S. Fish and Wildlife Service, (telephone 512/994–9005; facsimile 512/994–8262).

SUPPLEMENTARY INFORMATION:

Background

The cactus ferruginous pygmy-owl (Order Strigiformes—Family Strigidae) is a small bird, approximately 17 centimeters (cm) (6¾ inches (in)) long. Males average 62 grams (g) (2.2 ounces (oz)), and females average 75 g (2.6 oz). The cactus ferruginous pygmy-owl is reddish-brown overall, with a cream-colored belly streaked with reddish-brown. Some individuals are grayish, rather than reddish-brown. The crown is lightly streaked, and paired black-and-white spots on the nape suggest eyes. There are no ear tufts, and the eyes are yellow. The tail is relatively long for an owl and is colored reddish-brown with darker brown bars. The call of this diurnal owl, heard primarily near dawn and dusk, is a monotonous series of short notes.

The cactus ferruginous pygmy-owl is one of four subspecies of the ferruginous pygmy-owl. It occurs from lowland central Arizona south through western Mexico, to the States of Colima and Michoacan, and from southern Texas south through the Mexican States of Tamaulipas and Nuevo Leon. South of these regions and through Central America, *G. b. ridgwayi* replaces *G. b. cactorum*.

Throughout South America, *G. b. brasilianum* is the resident subspecies (Fisher 1893, van Rossem 1937, Friedmann *et al.* 1950, Schaldach 1963, Phillips *et al.* 1964, de Schauensee 1966, Karalus and Eckert 1974, Oberholser 1974, Johnsgard 1988). Additionally, Konig and Wink (1995) have identified a fourth subspecies of pygmy-owl from central Argentina (*G.b. stranecki*).

The cactus ferruginous pygmy-owl (hereafter ''pygmy-owl'' unless otherwise noted) was described by van Rossem (1937), based on specimens from Arizona and Sonora. It is distinguished from *G. b. ridgwayi* and *G. b. brasilianum* by its shorter wings and longer tail, and by generally lighter coloration (van Rossem 1937, Phillips *et al.* 1964). *G. b. cactorum* occurs in several color phases, with distinct differences between regional populations (Sprunt 1955, Burton 1973, Tyler and Phillips 1978, Hilty and Brown 1986, Johnsgard 1988). Some investigators (e.g., van Rossem 1937, Tewes 1993) have suggested that further taxonomic investigation may be needed, however, *G. b. cactorum* is widely recognized as a valid subspecies (e.g., Friedmann *et al.* 1950, Blake 1953, Sprunt 1955, Phillips *et al.* 1964, Monson and Phillips 1981, Millsap and Johnson 1988, Binford 1989). The American Ornithologists' Union (AOU) recognized *G. b. cactorum* in its 1957 Checklist of North American Birds (AOU 1957), but subsequent lists did not include subspecies (AOU 1983). Based on these authorities, the Service accepted *G. b. cactorum* as a subspecies in 1991 (56 FR 58804), and again in 1993 (58 FR 13045). The Service accepts that there is only one subspecies (*G. b. cactorum*) of cactus ferruginous pygmy-owl in Arizona.

The pygmy-owl nests in a cavity in a tree or large columnar cactus. Cavities may be naturally formed (e.g., knotholes) or excavated by woodpeckers. No nest lining material is used. The pygmy-owl also has nested in fabricated nest boxes (Proudfoot *et al.* 1994a, Proudfoot 1996). Three, four, five, and occasionally six eggs are laid (Bent 1938, Heintzelman 1979, Glenn Proudfoot, Texas A&M University at Caesar Kleberg Wildlife Research Institute, unpubl. data 1996) and incubated for approximately 28 days. The young fledge about 28 days after hatching. The pygmy-owl begins nesting activities in late winter to early spring. It is nonmigratory throughout its range (Bendire 1888, Griscom and Crosby 1926, Oberholser 1974, Johnson et al. 1979). The pygmy-owl's diverse diet includes birds, lizards, insects, small mammals (Bendire 1888, Sutton 1951, Sprunt 1955, Earhart and Johnson 1970, Oberholser 1974), and frogs (Proudfoot *et al.* 1994b).

The pygmy-owl occurs in a variety of subtropical, scrub, and woodland communities, including riverbottom woodlands, woody thickets (''bosques''), coastal plain oak associations, thornscrub, and desertscrub. Unifying habitat characteristics among these communities are fairly dense woody thickets or woodlands, with trees and/or cacti large enough to provide nesting cavities. Throughout its range, the pygmy-owl occurs at low elevations, generally below 1,200 meters (m) (4,000 feet (ft)) (Swarth 1914, Karalus and Eckert 1974, Monson and Phillips 1981, Johnsgard 1988, Enriquez-Rocha *et al.* 1993).

In southern Texas, the pygmy-owl's habitat includes coastal plain oak associations as well as the Tamaulipan thornscrub of the lower Rio Grande Valley region, which consists of mesquite (*Prosopis glandulosa*), hackberry (*Celtis* spp.), oak (*Quercus* spp.), and Texas ebony (*Pithecellobium ebano*) (Griscom and Crosby 1926, Bent

1938, Oberholser 1974, Tewes 1992, Wauer *et al.* 1993). In northeastern Mexico it occurs in lowland thickets, thornscrub communities, riparian woodlands, and second-growth forest (van Rossem 1945, AOU 1983, Enriquez-Rocha *et al.* 1993, Tewes 1993). In central and southern Arizona the pygmy-owl's primary habitats were riparian cottonwood (*Populus* spp.) forests, mesquite bosques, and Sonoran desertscrub, but the subspecies currently occurs primarily in Sonoran desertscrub associations of palo verde (*Cercidium* spp.), bursage (*Ambrosia* spp.), ironwood (*Olneya tesota*), mesquite (*Prosopis juliflora*), acacia (*Acacia* spp.), and giant cacti such as saguaro (*Cereus giganteus*), and organpipe (*Cereus thurberi*) (Gilman 1909, Bent 1938, van Rossem 1945, Phillips *et al.* 1964, Monson and Phillips 1981, Johnson-Duncan *et al.* 1988, Millsap and Johnson 1988). In northwestern Mexico the pygmy-owl occurs in Sonoran desertscrub, Sinaloan thornscrub, and Sinaloan deciduous forest as well as riverbottom woodlands, cactus forests, and thornforest (Enriquez-Rocha *et al.* 1993).

The available information indicates that distinct eastern and western populations of the pygmy-owl are definable. The pygmy-owl occurs along the lower Rio Grande and the coastal plain of southern Texas and northeastern Mexico. It also occurs in lowland areas of northwestern Mexico and southern Arizona. The pygmy-owl's elevational distribution, the distribution of habitat, and recorded locations indicate that these eastern and western ranges of the pygmy-owl are geographically isolated from each other and are ecologically distinct. In the United States, eastern and western portions of the pygmy-owl's range are separated by the basin-and-range mountains and intervening Chihuahuan Desert basins of southeastern Arizona, southern New Mexico, and western Texas. The pygmy-owl has never been recorded in this 805 kilometer (km) (500 mile (mi)) wide area (Bailey 1928, Phillips *et al.* 1964, Oberholser 1974, Sartor O. Williams, New Mexico Department of Game and Fish, *in litt.* 1991).

In Mexico, the eastern and western populations are separated by the highlands of the Sierra Madre Oriental and Occidental, and the Mexican Plateau. The pygmy-owl is considered rare on the Mexican Plateau at/or above elevations of 1,200 m (4,000 ft) on the west, and above 300 m (1,000 ft) on the east (Friedman *et al.* 1950). Some sources describe the eastern and western ranges as contiguous at the southern end of its range, near the southern end of the Mexican Plateau in central Mexico (Johnsgard 1988). Other sources describe these two ranges as disjunct (Burton 1973). In his description of the subspecies, van Rossem (1937) found that Texas specimens exhibited characteristics of both *G. b. cactorum* and *G. b. ridgwayi.* Ultimately, he did not assign Texas ferruginous pygmy-owls to *G. b. cactorum*, but noted that Ridgeway (1914, in Van Rossem 1937) considered them distinct from *G. b. ridgwayi*, and left the taxonomy of Texas pygmy-owls to be *G. b. cactorum* (e.g., Oberholser 1974, Millsap and Johnson 1988).

In addition to geographic separation, the pygmy-owl's eastern and western populations occupy different habitats. Although some broad similarities in habitat physiognomy are apparent (e.g., dense woodlands and thickets), floristically, these eastern and western habitats are very dissimilar. The desertscrub and thornscrub associations in Arizona and western Mexico are unlike any habitats occupied by the pygmy-owl in eastern Mexico and southern Texas. Also, the oak association habitat occupied on coastal plains in southern Texas is unlike any habitat available in the western portion of the pygmy-owl's range. However, the Tamaulipan thornscrub habitat of the east and the riverbottom mesquite-cottonwood bosque habitat in Arizona are more similar in physiognomy and to a slight degree in floristic makeup.

The potential for genetic distinctness further supports a distinction between eastern and western pygmy-owl populations. The fact that the pygmy-owl is nonmigratory throughout its range suggests that genetic mixing across wide areas may be infrequent. In addition, considerable variation in plumage between regional populations has been noted, including specific distinctions between Arizona and Texas pygmy-owls (van Rossem 1937, Burton 1973, Tyler and Phillips 1978, Johnsgard 1988).

These eastern and western populations of the pygmy-owl may be considered separately for listing under the Act. The Act defines ''species'' as any subspecies . . . and any distinct population segment of any species of vertebrate which interbreeds when mature (section 3(16)). Further, the Service's policy on vertebrate population segments (61 FR 4722) requires that, to be a listable entity under the Act, the population be ''discrete'' and significant. A population segment is ''discrete'' if it is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors. A population also can be considered ''discrete'' if it is delimited by international boundaries across which exist differences in management control of the species. The above information indicates that eastern and western populations of the cactus ferruginous pygmy-owl are distinct based on geographic isolation, distribution and status of habitat, and potential morphological and genetic distinctness.

A population segment is considered ''significant'' if its loss would constitute a significant gap in the range of the taxon. The above criteria lead the Service to consider the four separate populations of *G. b. cactorum* for listing purposes—western United States (Arizona), eastern United States (Texas), western Mexico, and eastern Mexico to be both discrete and significant. The Service herein proposes separate actions for these various population segments because the levels of threat, habitats occupied, quality of information, and overall status differ among these four populations.

Previous Federal Action

The Service included the pygmy-owl on its Animal Notice of Review as a category 2 candidate species throughout its range on January 6, 1989 (54 FR 554). After soliciting and reviewing additional information, the Service elevated *G. b. cactorum* to category 1 status throughout its range on November 21, 1991 (56 FR 58804). A category 1 species was, at that time, defined as a species for which the Service had on file substantial information to support listing, but for which a proposal to list had not been issued as it was precluded by other listing activities. The Service has since discontinued the practice of maintaining a list of species regarded as ''category 1'' or ''category 2'' candidates. Candidates are now considered only those species for which the Service has on file sufficient information to support issuance of a proposed listing rule (61 FR 64481).

Based on an extensive review of information on the subspecies, the Service has determined that it is now appropriate to list the Arizona population as endangered, not to finalize the proposed listing in Texas, and to continue reviewing the pygmy-owl in Mexico to determine whether Mexican populations should be proposed for listing. Recent information from Mexico indicates that the subspecies may be more abundant, at least in the southern portion of its range, than originally thought.

On May 26, 1992, a coalition of conservation organizations (Galvin *et al.* 1992) petitioned the Service requesting listing of the pygmy-owl as an endangered subspecies under the Act. The petitioners also requested designation of critical habitat. In accordance with Section 4(b)(3)(A) of the Act, on March 9, 1993, the Service published a finding that the petition presented substantial scientific or commercial information indicating that listing may be warranted, and initiated a status review on the pygmy-owl (58 FR 13045). In conducting its status review, the Service solicited additional comments and biological data on the status of the cactus ferruginous pygmy-owl through mailings, a notice in the Federal Register (58 FR 13045), and other means.

Section 4(b)(3)(B) of the Act requires the Secretary of the Interior to determine whether listing a petitioned species is warranted within 12 months of the petition's receipt (16 U.S.C. S 1531 *et seq.*). On December 12, 1994, the Service published a 12-month finding on the petitioned action (59 FR 63975). This finding indicated that listing of the cactus ferruginous pygmy-owl was warranted and a proposed rule was published on the same date to list the pygmy-owl as endangered in Arizona with critical habitat and as threatened in Texas without critical habitat.

The processing of this final rule conforms with the Service's final listing priority guidance published on December 5, 1996 (61 FR 64475). The guidance clarifies the order in which the Service will process rulemakings during fiscal year 1997. The guidance calls for giving highest priority to emergency listings (Tier 1) and the second highest priority (Tier 2) to finalizing proposed listings. This final rule falls under Tier 2. At this time there are no pending Tier 1 actions.

Summary of Comments and Recommendations

In the December 12, 1994, proposed rule (59 FR 63975) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to development of a final rule. The original comment period closed April 11, 1995, then was reopened from May 1, 1995, to May 30, 1995 (60 FR 19013), and again from October 10, 1996, to November 12, 1996 (60 FR 53187).

Appropriate State agencies and representatives, County and City governments, Federal agencies and representatives, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper/media notices inviting public comment were published in the following newspapers—in the State of Arizona, the Indian Country Today, the Tucson Citizen, the Arizona Republic, the Arizona Silver Belt, the Green Valley News/Sun, and the Eastern Arizona Courier; and for the State of Texas, in the Laredo Morning Times, the Corpus Christi Caller-Times, the Valley Morning Star, the Monitor, and the Brownsville Herald. The inclusive dates of publications were January 6–18, 1995, for the initial comment period; and April 21–26 and October 15–30, 1995, for the first and second extensions of the comment period, respectively.

In response to requests from the public, the Service held two public hearings. Notices of hearing dates and locations were published in the Federal Register on April 14, 1995 (60 FR 19013). Appropriate State agencies and representatives, County and City governments, Federal agencies and representatives, scientific organizations, and other interested parties were contacted regarding the hearings. Approximately 300 people attended the hearing in Tucson, Arizona and approximately 30 people attended the hearing in Weslaco, Texas. Transcripts of these hearings are available for inspection (see **ADDRESSES** section).

A total of 123 written comment letters were received at the Service's Ecological Services Field Office in Phoenix, Arizona—30 supported the proposed listing; 1 supported the proposed listing in Arizona only; 1 supported the proposed listing in Texas but was opposed to listing in Arizona; 8 opposed the proposed listing; 14 opposed the proposed listing and proposed critical habitat; 45 opposed only the proposed critical habitat; and 24 either commented on information in the proposed rule but stated neither support nor opposition, provided additional information only, or were nonsubstantive or irrelevant to the proposed listing.

Oral comments were received from 20 parties at the hearings. Written comments received at the hearings or given to Service representatives prior to the hearings are included within the discussion above. Of the oral comments at the hearings, 3 supported the proposed listing; 4 opposed the proposed listing; and 9 expressed neither support nor opposition, provided additional information only, or were nonsubstantive or irrelevant to the proposed listing.

In total, oral or written comments were received from 15 Federal and State agencies and officials, 11 local officials, and 126 private organizations, companies, and individuals. All comments, both oral and written, received during the comment period are addressed in the following summary with the exception of those pertaining to finalizing critical habitat and the proposed special rule. In accordance with the Service's published listing priority guidance, finalizing critical habitat is of the lowest priority and would only be addressed upon the completion of higher priorities. All comments regarding critical habitat will remain on file with the Service. Since the Service is not finalizing the proposed listing of the pygmy-owl as threatened in Texas, the associated proposed special rule and comments regarding it are now moot. Comments of a similar nature are grouped into a number of general issues. These issues and the Service's responses are discussed below.

Issue 1: Other processes, especially conservation agreements in lieu of listing, could be more effective at protecting these species, and would impose fewer regulations and restrictions on land use as compared to Federal listing.

Comment: One commenter asked what local, City, and County officials the Service had coordinated with on this action.

Service Response: The Service has maintained an active mailing list that includes local, City, and County officials, as well as State and Federal officials and private individuals who have expressed an interest in the pygmy-owl listing process. We have provided copies of Federal Register notices, including those announcing public hearing dates, throughout the listing process to individuals on this mailing list. Numerous local, City, County, State, and Federal agencies provided comments during open comment periods, and these comments have been considered in developing the final recommendation for this listing action. The administrative record is available for review, by appointment, during normal business hours (see **ADDRESSES** section).

Comment: Several commenters recommended doing conservation agreements in lieu of listing.

Service Response: The Service does not believe that a conservation agreement, sufficient to preclude listing in Arizona, is feasible at this time because of the extremely small population size and the numerous threats faced by the species. However, it should be noted that listing of the species does not preclude the future development of habitat conservation

plans or other conservation agreements with private individuals or agencies.

Comment: Several commenters understood that the Director of the Service has said that states should take the lead on matters of sensitive species, and therefore, the Service should follow its policy and let the states take the lead in addressing the habitat needs of the pygmy-owl and not list it.

Service Response: The Service is required to follow the provisions of the Act, and in regard to this action, its implementing regulations on listing in 50 CFR 424. Section 4(a) of the Act clearly assigns the responsibility of making listing decisions to the Secretaries of the Interior and Commerce. However, in making those decisions, the Secretaries are required to take into account conservation actions (section 4(b)(1)(A)), notify and invite comment from states, counties, and others on the proposed rules (section 4(b)(5)), hold one public hearing on the proposed rule, if requested (section 4(b)(5)(E)), and take other steps to ensure that the concerns of local governments, citizens, and others are considered in the listing decision. The Service has complied with all these requirements for listing the pygmy-owl.

The Service recognizes that unless preempted by Federal authority, states possess primary authority and responsibility for protection and management of fish, wildlife, and plants and their habitats. The Service has and will continue to solicit and utilize the expertise and information provided by the states. The Service will work closely with residents and officials in the management and recovery of the pygmy-owl. The Service invites others to work with us on voluntary conservation programs as well.

Issue 2: Economic, social, and cultural impacts of listing need to be evaluated and considered in the listing process.

Comment: Several commenters requested that the Service study the indirect and direct economic, social, and/or cultural costs and effects of listing the pygmy-owl. Concern was expressed that listing of the species would affect use and value of private property, use of areas of agricultural concern, new construction, trade and landowner rights, minorities, and off-road tour companies. Concern also was expressed that there would be no land owner compensation from the effects of listing. Some commenters stated that the results of this analysis should be weighed with threats, status, and other listing factors in determining whether these species should be listed.

Service Response: 50 CFR 424.11(b) requires the Secretaries of the Interior and Commerce to make decisions on listing based on ''the best available scientific and commercial information regarding a species' status, without reference to possible economic or other impacts of such determination.'' The Service is required to solicit comments from the public on proposed listings and consider those comments in final decisions (50 CFR 424.16), as we have done here. The Service does not have the authority or a regulatory mandate to conduct impact analyses on listing decisions, provide compensation to affected landowners, or take other actions outside of its authority.

Comment: Several commenters were concerned that the increased cost and delay associated with projects affected by the proposed rule will cause unreasonable consequences for future developments and/or needed public improvement projects.

Service Response: Any discretionary action funded, carried out, or authorized by a Federal agency that may affect a listed species would be subject to the section 7 consultation process. If a Federal agency is involved in developments and/or needed public improvement projects, it would need to evaluate its actions and possible effects on listed species. The Service is required to deliver a biological opinion, which concludes consultation, to the action agency within 135 days of receipt of a request for consultation (50 CFR 402.14(e)). If the action agency incorporates consultation into their planning process and consultation is initiated early, project delays are unlikely. Some additional costs may accrue resulting from meetings with the Service, preparation of documents, and implementation of any reasonable and prudent alternatives or measures in the biological opinion. Private actions that do not require Federal funds, actions, or authorization, such as a private individual building a house with private funds, are not subject to section 7.

Comment: Another commenter stated that the proposed listing of the pygmy-owl was an attempt to take property rights away from land owners, to gain more power, to increase personnel, and to control all of the rivers, creeks, washes, and water in the country.

Service Response: The purpose of this listing is to extend the protection of the Act to the pygmy-owl. This protection does not authorize the Service to increase personnel or assert jurisdiction over water rights, and the Service does not anticipate significant impacts to local economies or to the well-being of citizens. The listing of the pygmy-owl does not, in itself, restrict groundwater pumping or water diversions, does not in any way limit or usurp water rights, or violate State or Federal water law. Through section 7 consultations, extraction or use of water that is funded, carried out, or authorized by Federal agencies that might adversely affect the pygmy-owl could be modified through reasonable and prudent measures or alternatives in a biological opinion, pursuant to 50 CFR 402.14 (h) and (i).

As described in ''Available Conservation Measures'' section, with the promulgation of this rule, Federal agencies will be required to comply with section 7 of the Act to ensure their activities do not jeopardize the continued existence of these species. Compliance with section 7 or other provisions of the Act has never resulted in the wrongful taking of property. The Service does not envision a regulatory scenario that would result in such actions.

Issue 3: Information presented in the proposed rule was insufficient to support listing or was in error.

Comment: The pygmy-owl warrants an endangered listing in Texas, as opposed to threatened. The species has declined throughout a significant portion of its range in Texas and is now rare, significant threats continue to exist within that state and habitat continues to be low, and future threats to habitat in Texas are significant due to increasing human population near the border with Mexico.

Service Response: In Texas, the threats to the species are less prevalent than in Arizona. The Service does not believe listing is warranted at this time. Further discussion of the Service's decision not to finalize the listing proposal in Texas is discussed in the ''Summary of Factors Affecting the Species'' section, and elsewhere in this final rule.

Comment: Routine ranching activities have contributed to the decline of the species in Texas, yet the Service asserts that ''present land management by private (Texas) landowners is generally compatible with the well-being of the owl.'' This assertion cannot be squared with all the evidence indicating that the pygmy-owl is in grave danger of extinction in Texas.

Service Response: In Texas, pygmy-owl records are from two distinct areas. The first area is along the Rio Grande. Agricultural activities have historically resulted in clearing of 95 percent of the native Tamaulipan brushland in this area, as noted in the proposed rule. The second area is north of the Rio Grande Valley, in and around Kenedy County. The owls in these areas occupy coastal oak associations. As noted in this document, impacts to these areas are

lesser, with only limited oak clearing occurring. It is the land management by private landowners in the coastal oak association that is considered generally compatible with the well-being of the pygmy-owl. It is in these areas that the Service anticipates developing conservation agreements with private landowners to ensure conservation of the species.

The Service also will consider developing conservation agreements with willing landowners in the Rio Grande Valley. However, the Service believes that the ongoing establishment of native vegetation along the Rio Grande, as implemented by the Service's National Wildlife Refuge System, holds the most promise for conserving the species in the Rio Grande Valley.

Comment: Several commenters stated that Arizona and Texas represent the northern edge of the pygmy-owl's distribution and that most species are uncommon or of marginal occurrence at the edges of their range.

Service Response: The Service agrees that Arizona and Texas represent the northernmost portion of the pygmy-owl's range. However, we believe the information reviewed and discussed in the final rule indicates that pygmy-owls occurred in higher numbers in Arizona and Texas in the past, and that loss of habitat and other factors have led to their decline. The continued presence of birds in Arizona, including those that are successfully reproducing, indicates a persistent population. In addition, there is a significant population of nesting birds in Texas. The Service believes that listing the Arizona population at this time is necessary to prevent extirpation of the species from that portion of its range within the United States.

Comment: Several commenters claimed that the Service misrepresents the work of all nine authors it cites in support of its three subspecies claim. Not one of these authors cited by the Service discusses three subspecies of this owl.

Service Response: The use of the scientific name *Glaucidium brasilianum cactorum* in and of itself indicates recognition of a subspecies. Of the authors cited in the proposed and final rules on the discussion of taxonomy, van Rossem (1937), Friedmann *et al.* (1950), Sprunt (1955), AOU (1957), Schaldach (1963), Karalus and Eckert (1974), Johnsgard (1988), and Millsap and Johnson (1988) use *G. b. cactorum* in referencing the pygmy-owl. The leading authority on bird taxonomy, the AOU, recognized the cactus ferruginous pygmy-owl as a subspecies in its 1957 publication. As noted in the proposed rule and this and final rule, subsequent publications of the AOU have not addressed any subspecies, including that of the pygmy-owl.

Comment: Several commenters stated that the Service's analysis of the pygmy-owl's habitat preferences was flawed. They questioned whether deciduous riparian woodland is the preferred habitat for the pygmy-owl, and stated that their presence in Sonoran desertscrub is uncommon to rare and unpredictable. It also is possible that the apparent ''shift'' from riparian areas to upland areas closely correlates with the increase in woody brush in Arizona's grasslands that occurred throughout the central and southern portions of the State after the advent of cattle grazing in the late 1800's and early 1900's. There actually may be more suitable habitat now than in historic times when the riparian areas represented the only brushy habitat in what was otherwise primarily a desert grassland setting. Based on its erroneous assumption that the pygmy-owl prefers riparian habitats, the Service has focused its analysis on such habitats and not provided a discussion of threats to other habitat types.

Service Response: The proposed rule noted that the majority of the historical records came from along waterways such as the Rillito or Santa Cruz rivers, but also noted that Sonoran desertscrub provided suitable habitat for the pygmy-owl in central and southern Arizona. As noted within this final rule, naturalists collecting specimens have indicated that the pygmy-owl was rare in Sonoran desertscrub (see references to Kimball 1921, Johnson and Haight 1985, and Taylor 1986 within the text of the final rule). Since publishing the proposed rule, additional birds were found in Arizona, and the text within this final rule has been adjusted accordingly. The majority of the birds in the Arizona population occur in Sonoran desertscrub habitat.

While there may be more ''woody brush'' in Arizona today as a result of cattle grazing, not all of this vegetation is suitable pygmy-owl habitat. The pygmy-owl is known to occur in Sonoran desertscrub where that desertscrub is particularly dense and supports either saguaro cactus, organ pipe cactus, or mesquites of sufficient size for cavity nesting. In those Sonoran desertscrub areas where the pygmy-owl has been found in the last few years, a density of understory vegetation is also present. Surveys have occurred in areas known to support this vegetation, with negative results in some instances.

This final rule includes modifications to language in the proposed rule to indicate that pygmy-owls historically and currently use Sonoran desertscrub within the State of Arizona. The proposed rule also was modified to include language on the threats to this Sonoran desertscrub habitat, which are primarily from urban development.

Comment: One commenter stated that endangerment of the pygmy-owl in the Verde River area is due to the absence of federally placed signs, patrols, and follow-ups on shooting incidents.

Service Response: There are no known current records of pygmy-owls in the Verde River area and the Service is unaware of any shooting incidents that involved the pygmy-owl. The Service does not believe that posting of signs and conducting patrols in this area would benefit the owl at this time. Currently, with the exception of a few birds located on Organ Pipe Cactus National Monument (OPCNM), the pygmy-owl occurs on private land, and it is not within the Service's authority to place signs or conduct patrols on private property.

Comment: Some commenters suggested that the pygmy-owl is not in danger of extinction in all or a significant part of its range and that the Service overstates the threats to the species. The Service has failed to present any evidence of a particular threat to the pygmy-owl that has suddenly arisen and that is likely to lead to extinction unless curtailed. One commenter stated that the Service failed to establish that the removal of riparian forests and the diversion and channelization of natural watercourses, and pumping groundwater may also cause the diminishment of the species. One commenter claimed the Service overstates the effects of groundwater pumping and surface water diversions upon particular species of wildlife, and fails to distinguish among such water uses. Some commenters claimed the Service did not support assertions of habitat loss from traditional, historical, public and private land uses with reference to any scientific facts. One commenter asserted that there is no threat of destruction, modification, or curtailment of habitat.

Service Response: The Service does not believe that the threat to this species or its habitat in Arizona has been overstated. As noted within this final rule, the Service must evaluate the best scientific and commercial information available and determine if the proposal meets the definition of endangered or threatened based on any of the five listing factors. The Service completed this evaluation and finds that the pygmy-owl in Arizona meets the definition of endangered, owing to three

of the five factors, namely the present or threatened destruction, modification, or curtailment of its habitat or range, the inadequacy of existing regulatory mechanisms, and other natural or manmade factors affecting its existence.

The historic loss of riparian habitat in Arizona is well documented. Because of the current location of the largest known Arizona pygmy-owl population and pending developments in this key area, the Service believes that imminent threats have been identified. The factors related to this listing are provided in detail in the final rule under the ''Summary of Factors Affecting the Species'' section.

In response to the comment that the Service failed to establish that the removal of riparian forests, and the factors that cause it, also may cause the diminishment of the species, the Service notes that a variety of activities has been responsible for the loss of riparian habitat in the State of Arizona. Through historic records, the pygmy-owl is noted to have occurred in riparian areas prior to the mid-1900's and was described as a ''common,'' ''abundant,'' ''not uncommon,'' and ''fairly numerous'' resident of lowland central and southern Arizona in cottonwood forests, mesquite-cottonwood woodlands, and mesquite bosques along the Gila, Salt, Verde, San Pedro, and Santa Cruz rivers, and various tributaries. We believe, therefore, the statement is justified that the loss of riparian habitat has led to its decline. Numerous authors were cited with respect to this statement, and their names are provided in the final rule. Should all or a significant portion of the habitat within the range of a given species be removed or altered, diminishment of the species is not an unlikely result. The Service believes the link between habitat loss and the decline of the pygmy-owl has been made in the text of this final rule. The Service believes that the assertions of habitat loss from traditional, historical, public, and private land uses are well documented within the final rule under the section ''Summary of Factors Affecting the Species,'' particularly that section under the ''Western Populations'' subsection.

Comment: Several commenters suggested that no evidence exists to support the statement that the pygmy owl is declining, and others noted that the listing of a species should be based upon something more than the rarity of that species in a particular part of the United States.

Service Response: The Service has completed a review of available literature and believes that the information indicates that there has been a decline of the species in both Arizona and Texas. However, the Service does not believe the pygmy owl's decline is significant enough in Texas to warrant listing the species as threatened.

As discussed in the final rule, the pygmy-owl was described as a ''common,'' ''abundant,'' ''not uncommon,'' and ''fairly numerous'' resident of lowland central and southern Arizona, in riparian habitat along numerous drainages prior to the mid-1900's. In most instances, observations of pygmy-owls were made during site visits where the author was documenting all species observed over a given area, without focusing on the pygmy-owl. In contrast, Hunter (1988) found fewer than 20 verified records of pygmy-owls in Arizona for the period of 1971 to 1988, and recent survey efforts, focusing specifically on pygmy-owls, have located a total of 19 individuals at the highest, with most annual survey results being 2 to 3 birds.

It should be noted that there are five listing factors, as detailed in the text of this rule. While the pygmy-owl could be called rare, and while the Service believes the decline in numbers of individual birds to be an important piece of information, the recommendation to add the pygmy-owl in Arizona to the endangered species list was based on an analysis of the five listing factors.

Comment: Even the few reports that the Service did examine with respect to historic abundance were reported incorrectly or were not found in the Service files.

Service Response: Coues (1872) has been removed as a reference from that section of the listing that addresses species abundance in the early 1900's. However, the Service has verified that the remainder of the literature citations (Bendire 1888, Fisher 1893, Breninger 1898 *in* Bent 1938, Gilman 1909, Swarth 1914) were correctly quoted. All literature cited within this final rule is on file at the Service's Arizona Field Office (see **ADDRESSES** section).

It is important to note that, while the Service believes the number of birds has declined, the decision to list the pygmy-owl does not depend entirely on population trends of the pygmy-owl. It also is necessary to assess current threats to the remaining birds, through evaluation of the five listing factors. If this evaluation indicates that the number of birds known to currently occur in Arizona and Texas are under sufficient threat to cause them to be in danger of extinction or endangerment, the Service must make the decision to list the species. As outlined in this final rule, the Service believes analysis of the best scientific and commercial data indicates that the pygmy-owl is threatened with extinction in Arizona and warrants listing as an endangered species.

Comment: Not a single source listed by the Service ever conducted any analysis that would allow one to conclude that 90 percent of the riparian areas have been lost or modified. The fact that the Service presents an unfounded conclusion as scientific fact, without appropriate qualification, undermines the credibility of every other conclusion it has expressed and provides evidence that the rule is intended to further a political or other agenda unrelated to necessary protection for the pygmy-owl.

Service Response: The State of Arizona has twice recognized the loss of riparian habitat. The Governor's Riparian Task Force concluded that 90 percent of the riparian habitat in Arizona had been lost. This document is cited in the proposed rule and this final rule. Additionally, the Arizona Game and Fish Department (AGFD) stated that 90 percent of the State's riparian habitat had been lost in their November 1988 issue of Wildlife Views (AGFD 1988). This source has been added to this final rule. The Service has previously published literature (Department of Interior 1988) on the loss of riparian habitat indicating that an estimated 10 percent of the original riparian on the Colorado River remains, while 5 percent of the original riparian on the Gila River remains. This document states that only approximately 15 percent of the original riparian area in Arizona remains in its natural form. This citation also has been added to this final rule. The final rule has been modified to reflect this figure, as well as the 90 percent figure. The remainder of the references in this section address disturbance of riparian areas due to various activities, and address losses, although percentages are not provided.

Comment: The Service's statement that the pygmy-owl is now rare or absent in northern Sonora, within 150 miles of the United States-Mexico border, is incorrect. The Service inaccurately cites Russell and incorrectly assesses the status of the pygmy-owl in northern Sonora.

Service Response: The Service believes the literature cited in this final rule supports this statement. The reference to Monson and Russell, however, has been deleted.

Comment: Some commenters were concerned that the available information was not sufficient to accurately identify all areas or habitats with the potential

to support the species. Others suggested that more surveys, genetic data, information on pygmy-owls from Mexico, and dispersal data are needed.

Service Response: The Service agrees that many aspects of the ecology of this species are poorly understood and need further study. These aspects are treated as uncertainties here and in the proposed rule. Despite these uncertainties, sufficient surveys have been conducted to adequately assess the current status of the species, its perceived threats, and whether or not listing is warranted. The Service is not required to study and answer all questions concerning the ecology or status of a species before it may be listed. Rather, the Service is required to make listing determinations on the basis of the best scientific and commercial data available (section 4(b)(1)(A) of the Act).

Comment: One commenter stated that prey or lack of prey would not be a hindrance to the population. Similarly, one commenter asked what would happen if the prey items on which the pygmy-owl feeds were to become endangered.

Service Response: The Service interprets this comment to mean that it is not a lack of prey that has led to the decline of the pygmy-owl. The Service concurs with this statement. Studies have indicated that the pygmy-owl is a generalist with a diverse diet, including a variety of species of birds, insects, reptiles, small mammals, and amphibians. Therefore, it is unlikely that a lack of prey items, in and of itself, has contributed to a decline in the subspecies. Similarly, because the pygmy-owl uses a wide variety of prey items, it is unlikely that its feeding habitats would lead to the endangerment or extinction of a species. Should one of its prey items become extinct for other reasons, it should not have an adverse effect on the pygmy-owl.

Comment: One commenter stated that pygmy-owls were not extirpated in Arizona.

Service Response: The Service concurs with this statement. Surveys for 1996 indicated a total of 19 known birds, with 2 additional unconfirmed sightings. The final rule has been modified to amend the statement on extirpation that appeared in the proposed rule.

Comment: One commenter stated that a source for the map in the proposed rule was not given.

Service Response: The Service used various published and unpublished information to develop the Federal Register map.

Issue 4: The Services information is not based on the best scientific or commercial information.

Comment: A commenter stated that riparian loss is being addressed through various means, and listed several examples. It was further stated that the State of Arizona is committed to statutorily mandating riparian conservation so no other protection is necessary.

Service Response: The Service supports rehabilitation of riparian areas. However, the acres of riparian habitat that have been altered or removed since the early 1900's exceed those which have been rehabilitated. In addition, these projects have only recently been funded, and many years will be needed to determine their effectiveness in restoring riparian habitat and the resulting effect on pygmy-owl populations. Further, riparian loss is only one of many factors affecting the pygmy-owl.

Comment: Some commenters claimed that the Service ''mis-cites'' several authors to support the claim that the pygmy-owl's habitat is threatened by destruction and modification, that it was a commonly found inhabitant of mesquite bosques in Arizona, and that river bottom forests and bosques supported the greatest populations of pygmy-owls.

Service Response: Additional information has been added to the final rule to indicate that pygmy-owls were found historically in Sonoran desertscrub in central and southern Arizona. However, the Service believes that the available literature indicates that the majority of birds found by early naturalists were found in the riparian and mesquite bosque habitat along the major drainages in central and southern Arizona.

Comment: One commenter questioned the importance of mesquite habitat in Texas.

Service Response: As noted in this final rule, the pygmy-owl historically occurred in dense mesquite thickets along the Rio Grande. Further, as noted under section A, ''The present or threatened destruction, modification, or curtailment of its habitat or range'' for Texas, pygmy-owls have been detected in 1994 and 1995 on two of the ranches in Texas that support mesquite woodlands.

Comment: The Service has failed to examine the reports of many other early explorers who surveyed for wildlife but found few or no pygmy-owls. The Service only reviewed reports of early naturalists and ornithologists that actually referenced the pygmy-owl in their reports.

Service Response: The absence of a reference to pygmy-owls in the published reports of early naturalists does not establish absence of the species. It is possible that a naturalist who did not indicate that pygmy-owls were seen may not have known the species or may not have observed the species when the species was, in fact, present.

Comment: The Service has proposed the listing of the pygmy-owl without due regard to the studies currently being conducted by Dr. Sam Beasom of Texas A&M University.

Service Response: Although the proposed rule did not quote Dr. Beasom's studies, information from these studies has been included in the final rule. This information has been considered in reaching a final decision on listing of the pygmy-owl.

Comment: Much of what the Service assumes is true regarding the effects of groundwater pumping and surface water diversions is an ongoing debate among hydrologists, geologists and other experts. The Service's failure to consult the Arizona Department of Water Resources and other experts is a failure to consider the best scientific data available.

Service Response: The text of the final rule cites several sources indicating that pumping of groundwater, along with several other activities, has led to the reduction of riparian habitat. The Service believes that the connection between groundwater pumping and its effects on riparian habitat have been adequately documented through these sources. In addition, information was solicited from State and Federal agencies, as well as the public, and comments received during the open comment periods were evaluated as part of this analysis.

Comment: The Service has not completed any groundtruthing of data or notified the landowners of groundtruthing.

Service Response: For obvious reasons, the Service cannot groundtruth historical observation data. However, survey efforts conducted by the OPCNM, the AGFD, and the Service since 1990 have been conducted on the ground. The AGFD, which has conducted the work in the Tucson area, has contacted private landowners regarding their survey work in that area.

Comment: Some commenters felt that the rule was based on assumptions, hearsay, speculative observations, and anecdotal evidence, not scientific data, and that the Act does not provide for listing based on this type of information.

Service Response: The Service has used the best scientific and commercial

information available in its determination to list the pygmy-owl. The threats have been documented under the ''Summary of Factors Affecting the Species'' section. The Service believes there are adequate references within the final rule to document the detrimental effects of overgrazing, as well as other activities, on riparian habitat in the Southwest. Evidence presented in the literature and summarized in the final rule, including recent studies on the pygmy-owl in Texas and Arizona, indicate the importance of the different habitat types to pygmy-owls in the two different populations. The Service believes that the historical information referenced in the final rule, while potentially considered anecdotal or speculative, is important in developing an understanding of the subspecies. However, the Service did not rely solely on this information in developing a recommendation to list.

Comment: The rule suggests that different population segments tend to inhabit different habitat, although the various habitats do appear to share some basic characteristics. The rule then seems to suggest that within a specific area, the bird seems to need specific vegetation criteria. It seems the bird is far more adaptable than the Service gives it credit.

Service Response: As noted in the proposed rule and in this final rule, the eastern and western populations of the pygmy-owl inhabit different vegetation communities. Although these communities consist of different plant species (for example, live oak-honey mesquite and ebony in Texas, versus saguaros and cottonwood-willow in Arizona), there are common characteristics in the two communities, such as some form of vegetation large enough to support cavity nesting and a dense understory.

Comment: The cactus ferruginous pygmy-owl is not a separate species of the ferruginous pygmy owl.

Service Response: The Service considers the cactus ferruginous pygmy-owl to be a subspecies of the ferruginous pygmy-owl. The Service refers the commenter to the discussion on taxonomy under the ''Background'' section.

Comment: DNA analysis suggests lack of differentiation between Mexican and Texas populations, so there is no need to list.

Service Response: As noted in the proposed and final rules, the Service will continue to evaluate information on the pygmy-owl in Mexico and Texas. The Service's responses under Issue 5 explain the purpose in considering the separate populations identified in the proposed and final rules.

Issue 5: The designation of four distinct population segments for the pygmy-owl has no scientific or regulatory basis.

Comment: Several commenters stated that there is no biological reason or regulatory authority which would allow the Service to draw a distinct vertebrate population segment boundary at the international border.

Service Response: The Service's policy on distinct vertebrate population segments (61 FR 4722) recognizes that the use of international boundaries as a measure of discreteness of a population may introduce an artificial and nonbiological element to the recognition of distinct population segments. However, the Service has determined that it is reasonable to recognize units delimited by international boundaries when these units coincide with differences in the management, status, or exploitation of a species. With respect to the pygmy-owl, the Service believes the status of the species in Arizona is different from that in Sonora, with records currently indicating a higher number of individuals in Sonora as discussed in this final rule.

While the area classified as the range of the Arizona population may only represent a small percentage of its total range, it is the area within which the United States Government, through the Department of the Interior, can affect protection and recovery for this species. The Service believes that data indicate a decline of this species within its United States range, and that listing in Arizona is warranted.

Comment: Several commenters stated that the Service did not support its determination that the Arizona, Texas, eastern Mexico, and western Mexico populations of pygmy-owls meet the definition of discrete populations.

Service Response: The Service believes that the potential for genetic distinctness of the Arizona and Texas populations exists because the pygmy-owl is nonmigratory throughout its range and genetic mixing across the area separating the Arizona and Texas populations is likely infrequent. The Arizona and Texas portions of the pygmy-owl's range are separated by the basin and range mountains and intervening Chihuahuan Desert basins of southeastern Arizona, southern New Mexico, and western Texas.

In addition to geographic separation, the pygmy-owl's Texas and Arizona populations occupy different habitats. Although some broad similarities in habitat physiognomy are apparent (e.g., dense woodlands and thickets), floristically, these eastern and western habitats are very dissimilar. The desertscrub and thornscrub associations in Arizona are unlike any habitats occupied by the pygmy-owl in eastern Mexico and southern Texas. Also, the oak association habitat occupied on coastal plains in southern Texas is unlike any habitat available in the Arizona portion of the pygmy-owl's range. In addition, considerable variation in plumage between regional populations has been noted, including specific distinctions between Arizona and Texas pygmy-owls.

Comment: Several commenters stated that the Service did not show that the Arizona, Texas, eastern Mexico, and western Mexico populations of pygmy-owls were significant.

Service Response: The Service's policy on distinct vertebrate population segments requires it to consider the elements of discreteness, significance, and status. In determining whether or not a population meets the significance element, the Service must consider—(1) Whether a discrete population segment persists in an ecological setting unusual or unique for the taxon; (2) whether there is evidence that loss of the discrete population segment would result in a significant gap in the range of a taxon; (3) whether there is evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range; or (4) whether there is evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.

The Arizona and Texas populations of the cactus ferruginous pygmy-owl are unique due to their geographic separation, potential morphological and genetic distinctness, and the floristics, distribution, and status of habitat. Should the loss of either the Arizona or Texas populations occur, the remaining population would not fill the resulting gap as the remaining population would not be genetically or morphologically identical, and would require different habitat parameters. The loss of either population also would decrease the genetic variability of the taxon and would result in a significant gap in the range.

Issue 6: The existing regulations and management of the land by landowners are satisfactory for protecting the pygmy-owl.

Comment: Several commenters stated that both Arizona and Texas were adequately protecting the pygmy-owl so federally listing it would not be necessary. The State of Arizona is

committed to statutorily mandate riparian conservation so no other protection is necessary. The pygmy-owl already is listed as threatened by the State of Texas.

Service Response: While the Service recognizes the efforts of the State of Arizona in protecting potential pygmy-owl habitat, laws have yet to be finalized and potential benefits of these efforts have not yet been realized. Thus, these efforts have not yet affected the status of the species. However, these actions are expected to contribute to recovery.

Listing a species as threatened by Texas requires that permits be obtained for propagation, zoological gardens, aquariums, rehabilitation purposes, and scientific purposes, as noted in the final rule, but there are no provisions for habitat protection. However, the Service also believes that current land-use practices in the area of the main Texas pygmy-owl population are not detrimental to the species.

Comment: Several commenters felt that current landowners have protected and enhanced lands and that they are being penalized for being good stewards. They felt that the Service should be more interested in helping them and learning from them.

Service Response: The Service recognized, in the proposed rule and this final rule, that the major portion of the population in Texas exists today because present land management by private landowners is generally compatible with the well-being of the pygmy-owl. The Service will continue to work with landowners in developing management plans and agreements with the objective of conserving the Texas population.

Conversely, there is an imminent threat of extirpation of the subspecies in Arizona. The Service believes that listing of the pygmy-owl as endangered in Arizona provides protection of the pygmy-owl, as mandated by provisions of the Act.

Issue 7: The Service failed to follow Federal or other regulations in regard to the listing of these species.

Comment: The Service violates the Act's requirement for the Secretary to make his decision regarding listing of the species within 12 months of receiving the petition. The proposed rule was not published until some 17 months after the petition was filed. The *Idaho Farm Bureau Federation* v. *Babbitt* court ruling stated that if a proposal to promulgate a final regulation is not made within the statutory 12 months (or 18 months if an extension is declared), then the proper course is for the Secretary to find there is insufficient evidence at that time to justify the listing and to withdraw the listing.

Service Response: The petition to list these species was received by the Service on May 26, 1992. Regulations at 50 CFR 424.14(b) require the Service to publish, within 12 months of receipt, a notice in the Federal Register determining whether the petitioned action is warranted. If the action is warranted, the Service must promptly publish a proposed rule, with certain exceptions (50 CFR 424.14(b)(3)). In this case, the Service opted to publish a proposed rule at the same time as the 12-month finding. The date of that finding and proposed rule was December 12, 1994. In accordance with 50 CFR 424.17, the Service is required to publish a final determination or an extension within 1 year of the date of the proposed rule. In this case, the final rule was published well over a year after the proposed rule; however, this was due in part to legislation preventing the Service from issuing final rules from April 10, 1995, to October 1, 1995; a near cessation of final and other listing actions from October 1, 1995, to April 26, 1996, due to budget limitations and legislation; and a backlog and lack of personnel to complete final rules after April 26, 1996. Although the 12-month finding/proposed rule and this final rule were not published within the allotted timeframes, neither the Act nor the implementing regulations at 50 CFR 424 invalidate rules that are published late. The *Idaho Farm Bureau Federation* v. *Babbitt* court ruling was vacated by the U.S. Court of Appeals (*Idaho Farm Bureau Federation* v. *Babbitt*, Nos. 94–35164, 94–35230, U.S. Ct. App. (June 29, 1995). The court held that violating the time limit was not a prohibition on listing, but rather, that the ''time limits were designed as an impetus to act rather than as a bar on subsequent action.'' The court held that because the Act specified no consequences to violating the time limit, Congress intended to merely compel agency action rather than discard the listing process.

Comment: Several commenters stated that the Service did not provide adequate time for the public to comment on the proposed rule. The Service violated the Act and the Administrative Procedures Act (APA) by not notifying or providing the public with sufficient opportunity to comment. The Service also violated both Act and the APA by denying public access to materials upon which the proposed rule was based.

Service Response: Regulations at 50 CFR 424.16(c)(2) require the Service to allow a minimum of 60 days for public comment on proposed rules. Three comment periods were provided on the proposed rule, including a 120-day period from December 12, 1994, to April 11, 1995; 30 days from May 1 to May 30, 1995; and 34 days from October 10 to November 12, 1995; for a total of 184 days.

Regulations at 50 CFR 424.16(c)(3) require the Service to hold at least one public hearing if any person so requests within 45 days of publication of a proposed rule. The Service received nine requests for a public hearing within the 45-day request period. In response, public hearings were held in Tucson, Arizona, and in Weslaco, Texas. Additional requests for a public hearing were received more than 45 days after publication of the proposed rule. Although no additional public hearings were conducted, the Service twice reopened the comment period to accept additional comments and information.

In response to requests from the public, and in accordance with the Act and its implementing regulations, the Freedom of Information Act (FOIA), and the APA, the Service provided copies of documents to several members of the public and lent the administrative record for copying. Some requests for information were not promptly addressed because they were contained within comment letters on the proposed rule. In accordance with Service guidance on implementation of Public Law 104–6 that halted work on final rules, comment letters were filed and not read; thus granting of some information requests was delayed. However, the Service did not deny any information requests, with the exception of information withheld in accordance with the FOIA.

Comment: Listing of the pygmy-owl would constitute a violation of NEPA because the Service did not analyze the economic impacts of the action. Both the letter of the law and interpretive case law require the Service prepare NEPA planning documents and submit them for public review and input, which the Service did not do.

Service Response: As discussed in ''National Environmental Policy Act'' in this rule, the Service has determined that neither environmental assessments nor environmental impact statements need to be prepared for proposed or final listing actions.

Comment: One commenter stated that the notice was irretrievably flawed on a legal and technical basis by its use of an obsolete address to which comments and requests for public hearings on the proposed rule were to be sent. Additionally, this commenter stated that

comments and materials received were not available for public inspection at the old address; therefore, the Service must, by law, withdraw the proposed rule.

Service Response: Between the time the proposed rule was prepared and its publication, the Service moved its office within Phoenix, Arizona. The proposed rule listed the old address and facsimile number (the telephone number was correct in the proposed rule), but cover letters to interested parties and newspaper notices soliciting comment gave the correct address. The Service received some comment letters addressed to the old address; thus, the Post Office was forwarding our mail. A recorded phone message at the old phone number also informed callers of the new number in the event the old office was contacted. The Service is unaware of any comment letters, requests for hearings, or requests to inspect records that were returned to the sender.

In Federal Register notices announcing subsequent comment periods, from May 1 to May 30, 1995, and October 10 to November 12, 1995, the correct address and phone numbers were published. Because mail was forwarded and callers were informed of our new number, cover letters and newspaper notices included the correct address, and the latter two comment periods totaling 64 days were announced by Federal Register, newspaper notices, and cover letters with the correct address and phone number, the Service believes the public was provided adequate opportunity to provide comment on the proposed rule and inspect supporting information.

Comment: One commenter questioned if agency peer review policy was followed and whether the review is effective in weeding out hearsay from good science.

Service Response: The Service requested and/or received comments on the proposed rule from a variety of Federal, State, County, and private individuals. All parties the Service is aware of with expertise regarding the pygmy-owl have obtained copies of the proposed rule, and many have commented. All comments have been considered and new information was incorporated into this final rule.

Comment: Some commenters were concerned that the listing of this species would unnecessarily restrict public access on Federal lands.

Service Response: The Service does not foresee restricting access on Federal lands based on this listing.

Issue 8: The Service should not list the species because recovery of the species is too costly, puts an unfair burden on land owners in the United States, and is not guaranteed. Also listing the species would not benefit endangered species protection as a whole.

Comment: Several commenters stated that money and effort should not be given to list a species that the Service was not 100 percent sure could be recovered. Another commenter stated that attempting to recover a species in a highly-modified and degraded habitat, surrounded by an increasingly urbanized environment, creates a cognitive dissonance that begs a concise, logical, and irrefutable justification.

Service Response: Regulations at 50 CFR 424.11(b) require the Secretary of the Interior to make decisions on listing based on ''the best available scientific and commercial information regarding a species' status, without reference to possible economic or other impacts of such determination.'' There is nothing in the Act or implementing regulations that allows the Service to consider the recovery potential of a species in determining whether a species should be listed.

Comment: Without an immediate halt to the urbanization of the Phoenix and Tucson metropolitan areas, the potential impacts from such limiting factors will only increase in intensity and quite possibly negate any positive advances made rehabilitating this habitat.

Service Response: While the urbanization of the Phoenix and Tucson metropolitan areas have resulted in a decline in riparian areas where the pygmy-owl was historically found (i.e., the Gila, Salt, Rillito, and Santa Cruz rivers, and Canada del Oro Wash), it is not the intention of the Act to halt urbanization. In fact, the largest Arizona population of pygmy-owls is located in a developed section of Tucson, indicating that the pygmy-owl can coexist with certain levels of development. The recovery of this, or any other species, will require a variety of measures including project review through section 7 consultation, section 10 Habitat Conservation Plans, and development of conservation agreements where possible.

Comment: One commenter stated that the Service admitted that 70 to 80 percent of the pygmy-owl's habitat is in Mexico and questioned why the landowners in Arizona, Texas, and New Mexico should have to sacrifice their land to take care of Mexico's wildlife.

Service Response: As a point of clarification, the pygmy-owl is not known to occur in New Mexico, and this listing action is limited to Texas and Arizona. Neither the final rule, proposed rule, nor presentations at public hearings referenced the fact that 70 to 80 percent of the pygmy-owl's habitat is in Mexico, or that less than one-fifth of its range is in Arizona, and it is unclear what these figures are based on. Regardless of these figures, it is important to note that, although the Service is concerned with protecting populations in Mexico, the immediate concern is for populations within the boundaries of the United States. Listing of endangered species is the first of many steps, followed by mitigation of threats facing the species, and eventual recovery. It is more feasible for the United States Government to list, mitigate, and recover a species within our own jurisdiction. The Service has noted that we will continue to evaluate the status of the species in Mexico. We have not eliminated the possibility of cooperating with Mexico in implementing needed protection in that country.

Additionally, the Act does not authorize ''takings'' of private lands, and many of the provisions of the Act apply only to Federal agencies. Regardless of land ownership, the Act prohibits taking of a listed species. It should be noted that, through proper Federal actions, cooperation with private landowners, development of conservation agreements, and a variety of other measures, landowners will not have to ''sacrifice'' any lands to aid in the recovery of the pygmy-owl.

Comment: One commenter stated that listing species has created bitterness toward the Act and the Service and that listing species would give people a reason to kill endangered species and destroy habitat. One commenter recommended the Service not list the pygmy-owl because the current political climate would heat up even more against conservation and endangered species.

Service Response: Regulations at 50 CFR 424.11(b) require the Secretary of the Interior to make decisions on listing based on ''the best available scientific and commercial information regarding a species' status, without reference to possible economic or other impacts of such determination.'' The Service is aware that there are segments of the public that disagree with determinations made; however, the Service has no authority to base a listing decision on the possible aftereffects of listing.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Act and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the

procedures for adding species to the Federal List of Endangered and Threatened Wildlife and Plants. A species may be determined to be endangered or threatened owing to one or more of the five factors described in Section 4(a)(1) of the Act. These factors and their application to the cactus ferruginous pygmy-owl are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The pygmy-owl is threatened by past, present, and potential future destruction and modification of its habitat, throughout a significant portion of its range in Arizona (Phillips *et al.* 1964, Johnson *et al.* 1979, Monson and Phillips 1981, Johnson and Haight 1985a, Hunter 1988, Millsap and Johnson 1988). The severity of habitat loss and threats varies across the pygmy-owl's range. Population numbers have been drastically reduced in Arizona, which once constituted its major United States range. In Texas, pygmy-owl populations have experienced significant declines, from the lower Rio Grande Valley but persists in oak associations on the coastal plain north of the Rio Grande Valley.

The majority of these losses are due to destruction and modification of riparian and thornscrub habitats. It is estimated that between 85 and 90 percent of low-elevation riparian habitats in the southwestern United States have been modified or lost. These alterations and losses are attributed to urban and agricultural encroachment, woodcutting, water diversion and impoundment, channelization, livestock overgrazing, groundwater pumping, and hydrologic changes resulting from various land-use practices (e.g., Phillips *et al.* 1964, Carothers 1977, Kusler 1985, AGFD 1988a, DOI 1988, General Accounting Office 1988, Jahrsdoerfer and Leslie 1988, Szaro 1989, Dahl 1990, State of Arizona 1990, Bahre 1991).

Status information for pygmy owls in Mexico is very limited, but some observations suggest that although habitat loss and reductions in numbers are likely to have occurred in northern portions of the two subspecies in Mexico, the pygmy-owl persists as a locally common bird in southern portions of Mexico. Habitat loss and population status are summarized below for the four populations of the pygmy-owl.

Western Populations

Several habitat types are used by the pygmy-owl in the western portion of its range. These include riparian woodlands and bosques dominated by mesquite and cottonwood, Sonoran desertscrub (usually with relatively dense saguaro cactus forests), and Sinaloan deciduous Forest (van Rossem 1945, Phillips *et al.* 1964, Karalus and Eckert 1974, Millsap and Johnson 1988).

1. Arizona

The northernmost record for the pygmy-owl is from New River, Arizona, approximately 55 km (35 mi) north of Phoenix, where Fisher (1893) found it to be ''quite common'' in thickets of intermixed mesquite and saguaro cactus. Prior to the mid-1900's, the pygmy-owl also was described as ''not uncommon,'' ''of common occurrence,'' and a ''fairly numerous'' resident of lowland central and southern Arizona in cottonwood forests, mesquite-cottonwood woodlands, and mesquite bosques along the Gila, Salt, Verde, San Pedro, and Santa Cruz rivers, and various tributaries (Breninger 1898 *in* Bent 1938, Gilman 1909, Swarth 1914). Bendire (1988) noted that he had taken ''several'' along Rillito Creek near Fort Lowell, in the vicinity of Tucson, Arizona. The pygmy-owl also occurs in Sonoran desertscrub associations in southern and southwestern Arizona, consisting of palo verde, ironwood, mesquite, acacia, bursage, and columnar cacti such as the saguaro and organpipe (Phillips *et al.* 1964, Davis and Russell 1984 and 1990, Monson and Phillips 1981, Johnson and Haight 1985a, Johnsgard 1988).

In the past, the pygmy-owl's occurrence in Sonoran desertscrub was apparently less common and predictable. It was more often found in xeroriparian habitats (very dense desertscrub thickets bordering dry desert washes) than more open, desert uplands (Monson and Phillips 1981, Johnson and Haight 1985a, Johnson-Duncan *et al.* 1988, Millsap and Johnson 1988, Davis and Russell 1990). The pygmy-owl also was noted to occur at isolated desert oases supporting small pockets of riparian and xeroriparian vegetation (Howell 1916, Phillips *et al.* 1964).

The trend of Sonoran desertscrub habitats and pygmy-owl occupancy is not as clear. Historical records from this habitat in Arizona are few. This may be due to disproportionate collecting along rivers where humans were concentrated, while the upland deserts were less intensively surveyed. Johnson and Haight (1985a) suggested that the pygmy-owl adapted to upland associations and xeroriparian habitats in response to the demise of Arizona's riverbottom woodlands. However, conclusive evidence to support this hypothesis is not available. It may be that desertscrub habitats simply are of lesser quality and have always been occupied by pygmy-owls at lower frequency and density (Johnson and Haight 1985b, Taylor 1986). While historical records of pygmy-owls do exist for Sonoran desertscrub in areas such as the Santa Catalina foothills, they generally note that the birds are rare in these areas (Kimball 1921).

Both riparian and desertscrub habitats are likely to provide several requirements of the pygmy-owl ecology. Trees and large cacti provide cavities for nesting and roosting. Also, these habitats along watercourses are known for their high density and diversity of animal species that constitute the pygmy-owl's prey base (Carothers 1977, Johnson *et al.* 1977, Johnson and Haight 1985b, Stromberg 1993).

The pygmy-owl has declined throughout Arizona to the degree that it is now extremely limited in distribution in the State (Davis and Russell 1979, Johnson *et al.* 1979, Monson and Phillips 1981, AGFD 1988a, Johnson-Duncan *et al.* 1988, and Millsap and Johnson 1988). Riverbottom forests and bosques, which supported the greatest abundance of pygmy-owls, have been extensively modified and destroyed by clearing, urbanization, water management, and hydrological changes (Willard 1912, Brown *et al.* 1977, Rea 1983, Szaro 1989, Bahre 1991, Stromberg *et al.* 1992, Stromberg 1993). Cutting for domestic and industrial fuelwood was so extensive throughout southern Arizona that, by the late 19th century, riparian forests within tens of miles of towns and mines had been decimated (Bahre 1991). Mesquite was a favored species, because of its excellent fuel qualities. The famous, vast forests of ''giant mesquites'' along the Santa Cruz River in the Tucson area described by Swarth (1905) and Willard (1912) fell to this threat, as did the ''heavy mesquite thickets'' where Bendire (1888) collected pygmy-owl specimens along Rillito Creek, a Santa Cruz River tributary, also in what is now Tucson. Only remnant fragments of these bosques remain.

Cottonwoods also were felled for fuelwood, fenceposts, and for the bark, which was used as cattle feed (Bahre 1991). In recent decades, the pygmy-owl's riparian habitat has continued to be modified and destroyed by agricultural development, woodcutting, urban expansion, and general watershed degradation (Phillips *et al.* 1964, Brown *et al.* 1977, State of Arizona 1990, Bahre 1991, Stromberg *et al.* 1992, Stromberg 1993). Sonoran desertscrub has been affected to varying degrees by urban and agricultural development, woodcutting, and livestock grazing (Bahre 1991).

In addition to clearing woodlands, the pumping of groundwater and the diversion and channelization of natural watercourses are also likely to have reduced pygmy-owl habitat. Diversion and pumping result in diminished surface flows, and consequent reductions in riparian vegetation are likely (Brown *et al.* 1977, Stromberg *et al.* 1992, Stromberg 1993). Channelization often alters stream banks and fluvial dynamics necessary to maintain native riparian vegetation. The series of dams along most major southwestern rivers (e.g., the Colorado, Gila, Salt, and Verde) have altered riparian habitat downstream of dams through hydrological and vegetational changes, and have inundated former habitat upstream.

Livestock overgrazing in riparian habitats is one of the most common causes of riparian degradation (e.g., Ames 1977, Carothers 1977, Behnke and Raleigh 1978, Forest Service 1979, General Accounting Office 1988). Effects of overgrazing include changes in plant community structure, species composition, relative species abundance, and plant density. These changes are often linked to more widespread changes in watershed hydrology (Brown *et al.* 1977, Rea 1983, GAO 1988), and are likely to affect the habitat characteristics critical to the pygmy-owl.

Hunter (1988) found fewer than 20 verified records of pygmy-owls in Arizona for the period of 1971 to 1988. Although pygmy-owls are diurnal and frequently vocalize in the morning, the species was not recorded or reported in any breeding bird survey data in Arizona (Robbins *et al.* 1986). Formal surveys for the pygmy-owl on OPCNM began in 1990, with one bird located that year. Beginning in 1992, in survey efforts conducted in cooperation with the AGFD, three single pygmy-owls were located on the Monument (Fish and Wildlife Service and National Park Service, unpubl. data 1992). In 1993, more extensive surveys again located three single pygmy-owls in Arizona (AGFD unpubl. data 1993, Felley and Corman 1993). During 1993–1994 surveys, one pair of owls was detected in north Tucson, near the sightings in 1992 and 1993 (Collins and Corman 1995). Two individual owls were found in northwest Tucson during 1995 surveys, and an additional owl was detected at OPCNM (Lesh and Corman 1995).

In 1996, the AGFD focused survey efforts in northwest Tucson and Marana, and detected a total of 16 birds, two of which were a pair, and two of which were fledglings. Three additional pygmy-owls were detected on OPCNM in 1996, with three additional, but unconfirmed, reports (Harold Smith, National Park Service, OPCNM, *in litt.* 1996).

Potential threats to pygmy-owl habitat in Arizona persist. Through the public comment period, the Service was made aware of five specific housing and development projects operating or in the planning stages that would affect habitat where the majority of birds in Arizona currently exist. Housing and industrial developments continue to expand in the Tucson area, and the northwest portion of the Tucson area is experiencing rapid growth. It was estimated that only 60 percent of the people living in the Tucson area are within the city of Tucson, even though the city limits continue to be expanded to keep up with urban expansion (Sierra Club 1988, Duane Shroufe, AGFD, *in litt.* 1996).

The AGFD (D. Shroufe, *in litt.* 1996) estimated that 22,032 hectares (ha) (54,400 acres (ac)) of suitable habitat exists in the northwest Tucson area, where the majority of birds are found for the western population. Surveys completed in 1996 covered 44.2 square km (17.0 square mi) of this area (Abbate 1996). The AGFD notes that, while 60 percent of this land is in State Trust or Bureau of Land Management (BLM) ownership, much of the land may be subject to development as the Town of Marana is developing a general plan for future growth that may incorporate these areas. In addition, the BLM is evaluating a proposal to exchange all of its land within this area to a developer.

At OPCNM, potential threats include the increased risk of wildfire associated with an invasion of the OPCNM by nonnative grasses such as red brome (*Bromus tectorum*) and buffelgrass (*Pennisetum ciliare*). Sonoran desertscrub is not generally considered fire adapted, and fire can lead to loss of saguaros. An additional threat in this area is the increasing visitation and through-traffic from the international port of entry at Lukeville (H. Smith, *in litt.* 1996).

In summary, very few pygmy-owls remain throughout the pygmy-owl's historic range in Arizona due to extensive loss of habitat. In addition, the remaining pygmy-owl habitat faces numerous and significant threats.

2. Western Mexico

The pygmy-owl occurs in the more arid lower elevations (below 1,200 m (4,000 ft) elevation) in western Mexico in riparian woodlands and communities of thornscrub and large cacti. The pygmy-owl is absent or rare in the highlands of Mexico's central plateau (Friedmann *et al.* 1950), where the least (*G. minutissima*) and northern (*G. gnoma*) pygmy-owls occur.

In the mid-20th century, the pygmy-owl was generally described as ''common'' in western Mexico (van Rossem 1945, Friedmann *et al.* 1950, Blake 1953). Schaldach (1963) considered the pygmy-owl abundant at the southern extreme of its range in Colima 30 years ago, and 50 years ago the pygmy-owl was considered ''fairly common'' in the lower elevations of western Sonora (van Rossem 1945). Current information on the status of the pygmy-owl and its habitat in western Mexico is incomplete, but suggests that trends vary within different geographic areas. The pygmy-owl can still be located fairly easily in southern Sonora (Babbitt 1985, Troy Corman, AGFD, pers. comm. 1994), but its distribution is somewhat erratic. Christmas Bird Count data from 1972 through 1995 from Alamos, Sonora, and San Blas, Nayarit, indicate that the pygmy-owl is common, but detections varied widely from year to year, possibly due to variations in the time spent per count and the number of searchers participating in the count. The count for Alamos, Sonora never exceeded four individuals, and no sightings were recorded in 10 out of 14 years (National Audubon Society 1972–1995). In recent years, pygmy-owls have been found in abundance in some areas but not detected in other areas of apparently similar habitat. Abundance also varies between habitat types, being more abundant in thorn forest than cactus forest (Taylor 1986).

The pygmy-owl is now rare or absent in northern Sonora, within 241 km (150 mi) of the United States-Mexico border (Hunter 1988, D. Shroufe, *in litt.* 1996). Extensive conversion of desertscrub and thornscrub to the exotic, buffelgrass, for livestock forage is now taking place, but quantification is not currently available. It is possible that the factors causing declines in Arizona also are affecting western Mexico (Deloya 1985, Hunter 1988). The region of Sonoita, Mexico, immediately south of OPCNM currently is undergoing extensive urban and agricultural development that may result in modification or destruction of movement corridors for the pygmy-owl between southern Arizona and northern Sonora (H. Smith, *in litt.* 1996). However, further information is needed before determining whether this subspecies should be listed in western Mexico.

Eastern Populations

Several habitat types also are used by the pygmy-owl in the eastern portion of

its range. These include coastal plain oak associations in south Texas (Tewes 1993, Wauer *et al.* 1993), Tamaulipan thornscrub in the lower Rio Grande Valley and other lowland areas, and thick forest and second-growth forest in the Mexican States of Nuevo Leon and Tamaulipas. The use of cypress trees by pygmy-owls along the Rio Grande also has been noted (Tewes 1993).

1. Texas

The pygmy-owl's historical range in Texas included the lower Rio Grande Valley, where it was considered a common resident of dense mesquite, cottonwood-ebony woodlands, and Tamaulipan Brushland (Griscom and Crosby 1926, Bent 1938, Friedmann *et al.* 1950, Stillwell and Stillwell 1954, Oberholser 1974, Heintzelman 1979, Hunter 1988, Millsap and Johnson 1988). Pygmy-owls also occur in coastal plain oak associations between Brownsville and Corpus Christi (Oberholser 1974), where it has recently been found in higher numbers than previously known (Texas A&M University, *in litt.* 1993, Wauer *et al.* 1993, P. Palmer, *in litt.* 1993, Mays 1996, Proudfoot 1996).

Until recently, formal surveys in Texas were lacking, but pygmy-owls were reported as occurring generally in two areas: the Rio Grande floodplain below Falcon Dam; and along U.S. Highway 77, north of the lower Rio Grande Valley. Wauer *et al.* (1993) note that pygmy-owls have been reported almost annually from the Rio Grande floodplain downstream of Falcon Dam to the Santa Anna National Wildlife Refuge in Starr and Hidalgo counties. Two pygmy-owls were reported below the dam in April 1993 (ABA 1993). These records generally are for 1 bird or 1 pair of birds, with the exception of a report of 10 birds from below the Dam in 1989 (unpubl. data). More recently, pygmy-owls have been located in Kenedy, Brooks and adjacent south Texas counties (Wauer *et al.* 1993). Oberholser (1974) reported birds on the Norias Division of the King Ranch as having been discovered in 1968.

A larger population of birds occurs on the King Ranch and surrounding ranches, approximately 112 km (70 mi) north of Brownsville. Caesar Kleberg Wildlife Research Institute at Texas A&M University (*in litt.* 1996) states that the most consistently used habitat, of which the King Ranch is a part, is a 4,660 square km (1800 square mi) oblong area of sandy soils, which support live oak (*Quercus virginiana*), honey mesquite (*Prosopis glandulosa*), and live oak mottes (small groupings of live oaks). Beasom (1993) described this same area, historically known as the Wild Horse Desert, as an intrusion of deep, coastal sands that protrudes inland for approximately 81 km (50 mi) from the Laguna Madre and covers portions of northern Willacy, Kenedy, and Brooks counties. This area was recognized as a distinct vegetational region in Texas by Blair (1950), who noted that brush in this area thins out as available moisture declines inland, and that there was a difference in plant composition in this area due to the extensive sand strip.

Four recent studies have been completed in Texas on the pygmy-owl, with three of these focusing on the Norias Division of the King Ranch (Tewes 1993, Wauer *et al.* 1993, Mays 1996, Proudfoot 1996). Tewes (1993) conducted a study by contacting individuals with possible information on the pygmy-owl, reviewing museum specimen records, and conducting a survey. Tewes noted that his contacts believed the most accessible pygmy-owls in Texas were those below Falcon Dam in Starr County, but noted additional sighting records for other Texas counties were fewer and often accompanied by reports of unsuccessful surveys. This was true for Hidalgo (four sightings, one unsuccessful search), Zapata (one sighting, one unsuccessful search), and Cameron (zero sightings, one unsuccessful search) counties.

Surveys were conducted as part of this study at 27 sites in Mexico and 11 sites in Texas, with 12 positive responses noted. However, these responses were all in Mexico. Survey efforts in Texas that yielded no responses occurred on the Laguna Atascosa and Santa Anna National Wildlife Refuges, along Highways 77 and 281, and at the Falcon Recreation Area, Kelly Wildlife Management Area, Bentsen State Park, and Los Penitas Wildlife Management Area (Tewes 1993).

Additional survey results from work completed in 1993 found 116 individual, nonredundant pygmy-owl records on and around the King Ranch in mature mixed live oak-mesquite habitats. The highest density of birds found in this survey was on the Norias Division of the King Ranch (Wauer *et al.* 1993).

Mays (1996) also focused study efforts on the Norias Division of the King Ranch, and included portions of the Kenedy Ranch, the Encino Division of the King Ranch, the Canelo Ranch, and the Runnels Ranch. Habitat on the Norias Division is live oak, while the Kenedy Ranch and the Encino Division of the King Ranch support live oak-honey mesquite woodland. The Canelo Ranch supports honey mesquite woodland, but no live oak, as does the Runnels Ranch. Mays recorded 166 responses during 1994 and 1995 on the King, Kenedy, Canelo, and Runnels ranches. The TPWD conducted additional studies during this 2-year period and reported three responses on the Mariposa Ranch, and no responses for the LaCopa, Cage, and Hopper ranches. During 1995, TPWD sampled but recorded no responses for the Mariposa, LaCopa, Cage, Hopper, Los Compadres, Singer, Jones, Myrick, Rancho Isabela or Mills Bennett ranches.

Proudfoot (Glenn, pers. comm. 1996) has trapped and banded pygmy-owls on the Norias Division of the King Ranch, focusing on a 29,000 ha (71,393 ac) portion of the King Ranch supporting a live oak-honey mesquite forest. This effort resulted in the trapping and banding of 111 pygmy-owls. It should be noted that there is overlap between work completed by Mays and that completed by Proudfoot, so that the number of individuals recorded by each are not additive. Of the estimated 101,250 ha (250,000 ac) of live oak habitat surrounding the King, Kenedy, and other nearby ranches, it is estimated that all but a 4,050 ha (10,000 ac) parcel on one ranch have been surveyed for pygmy-owls (G. Proudfoot, pers. comm.).

While the number of known individuals ranges from 111 (Glenn, pers. Comm. 1996) to 166 (Mays, 1996), the estimated population is much higher. Mays (1996) estimated between 745 and 1,823 pygmy-owls on the Norias Division of the King Ranch alone. Wauer *et al.* (1993) estimated 1,308 birds in the habitat available in Kenedy, Brooks, and Willacy counties. The Caesar Kleberg Institute of Texas A&M University believes that pygmy-owl populations in Texas are viable and probably exceed 1,300 birds.

The Service believes that the habitat for pygmy-owls along the coastal plain of southern Texas is stable, and may be increasing as former grasslands are invaded by oaks and the oaks mature to form the structural characteristics favored by pygmy-owls. Further, the habitat on the large, privately-owned ranches in this area is largely managed for wildlife (e.g., hunting, birding), conversion for agricultural use is considered uneconomical and unlikely, and other threats to this habitat are low or nonexistent (Caesar Kleberg Wildlife Institute *in litt.* 1996).

Through the Santa Ana/Lower Rio Grande Valley National Wildlife Refuge Complex in Texas, the Service has recently started a Wetlands Reserve

Program with the Natural Resources Conservation Service. Using grant monies, the Service will pursue the purchase of easements with willing landowners. The focus of the easement agreements will be on habitat protection and restoration. Additional tracts of land are being evaluated for purchase in river frontage areas in Starr and Hidalgo counties. These efforts will result in a corridor of riparian woodlands, which may serve as pygmy-owl habitat in the future (L. Ditto, pers. comm. 1996).

In summary, there remains a significant population of pygmy-owls in the coastal plain area of Texas, and a substantial amount of habitat exists. That habitat is largely managed for wildlife. The economic feasibility of conversion to agricultural use makes threats to the habitat low or nonexistent. Finally, habitat acquisition and rehabilitation underway in the lower Rio Grande Valley should provide substantial pygmy-owl habitat. For these reasons, the Service determines that the cactus ferruginous pygmy-owl in Texas is not likely to become endangered in the foreseeable future throughout all or a significant portion of its range. There is not sufficient evidence to justify finalizing that portion of the proposed rule.

2. Eastern Mexico

The pygmy-owl occurs in lowland regions (below 330 m (1,000 ft)) along the Gulf Coast of Mexico (Friedmann *et al.* 1950), in the states of Tamaulipas and Nuevo Leon. Its primary habitat in this region is Tamaulipan thornscrub, forest edge, riparian woodlands, thickets, and lowland tropical deciduous forest (Webster 1974, Enriquez Rocha *et al.* 1993, Tewes 1993). The pygmy-owl is absent or rare in the highlands of Mexico's central plateau (Friedmann *et al.* 1950), where the least and northern pygmy-owls occur.

In the mid-20th century, the pygmy-owl was generally described as having been common in eastern Mexico (Friedman *et al.* 1950, Blake 1953). Current information on the status of the pygmy-owl and its habitat in eastern Mexico is incomplete. In 1976, the pygmy-owl was reported to be ''fairly common'' in the Sierra Picachos of Nuevo Leon (Arvin 1976). In 1991, Tewes located pygmy-owls at 13 of 27 survey sites in northeastern Mexico.

Christmas Bird Count data from 1972 through 1996 from Rancho Los Colorados, Rio Corona, and Gomez Farias, all in Tamaulipas, indicate the pygmy-owl was common, but detections varied widely from year to year, probably due to time spent per count and the number of individuals involved in the count effort (National Audubon Society 1972–1996). Christmas Bird Count data indicated the same for ferruginous pygmy-owls at El Naranjo in San Louis Potosi, at the zone of probable intergradation between *G. b. cactorum* and *G. b. ridgwayi.*

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* The pygmy-owl is highly sought by birders who concentrate at several of the remaining known locations of pygmy-owls in the United States. Limited, careful birding is probably not harmful; however, excessive attention by birders may at times harass and affect the occurrence and behavior of the pygmy-owl (Oberholser 1974, Tewes 1993). For example, in early 1993, one of the few areas in Texas known to support the pygmy-owl continued to be widely publicized (American Birding Association 1993). The resident pygmy-owls were detected at this highly-visited area only early in the breeding season and not thereafter. O'Neil (1990) also indicated that five birds initially detected in southern Texas failed to respond after repeated visits by birding tours. Additionally, Oberholser (1974) and Hunter (1988) indicated that, in southern Texas, recreational birding may disturb owls at highly visited areas.

C. *Disease or Predation.* One disease potentially affecting the pygmy-owl is trichomoniasis, as identified by the AGFD (D. Shroufe, *in litt.* 1996). Because owls prey on finches, sparrows, and other seed-eating birds known to carry trichomoniasis, they are at risk of contracting the disease. According to Boal and Mannan (1996), raptors in urban areas experience a higher exposure rate to trichomoniasis, and the result is high mortality of raptor nestlings. No studies have been completed to date on the pygmy-owl in urban or other areas to determine if, in fact, pygmy-owls have been affected by this disease.

Recent work by Proudfoot (1996) indicates that snake predation may be an additional factor adversely affecting the pygmy-owl population on the Norias Division of the King Ranch. Proudfoot noted that nest boxes previously containing eggs would later be discovered empty, without sufficient time having elapsed to allow for fledging to occur. A lack of egg shell remains in nest boxes may indicate that snakes have depredated nests containing pygmy-owl eggs. Although long-tailed weasels (*Mustela frenata*) also occur in this study area, the lack of egg shell remains and the nest box configuration indicate that weasels are not likely to have eaten the eggs. Nest boxes are typically 14 x 14 x 46 cm (5.5 x 5.5 x 18 in.) with a 5.13 cm (2.0 in.) entrance hole placed 31 cm (12 in.) above the box bottom.

Proudfoot (1996) has observed the indigo snake (*Drymarchon corais*) climbing trees on the King Ranch and notes that the indigo snake is known to prey on cavity nesting green-cheeked Amazon parrots (*Amazona viridigenalis*). Proudfoot notes that, from 1993 to 1996, eight out of 112 available nest boxes (or 232 nest box opportunities) were used. Where flashing was placed around trees to prevent the possibility of predation by snakes, eggs were not disturbed. For the four nest boxes left unprotected, three were depredated before the eggs hatched, while one was depredated following hatching. Proudfoot further noted that fecundity (the number of young successfully raised per year), for natural cavities was approximately one-third that of fecundity for nest boxes, and speculates that eggs and birds in natural cavities were likely to have been depredated by both snakes and long-tailed weasels, resulting in a lower fecundity rate (G. Proudfoot, pers. comm. 1996). However, it is unknown what the effect of nest predation is on mortality rates of the pygmy-owl population, nor whether predation notes are unnaturally high.

D. *The inadequacy of existing regulatory mechanisms.* Although the pygmy-owl is considered nonmigratory, it is protected under the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703–712). The MBTA is the only direct, current Federal protection provided for the cactus ferruginous pygmy-owl. The MBTA prohibits ''take'' of any migratory bird. ''Take'' is defined as ''* * * to pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to pursue, hunt, shoot, wound, kill, trap, capture, or collect.'' However, unlike the Act, there are no provisions in the MBTA preventing habitat destruction unless direct mortality or destruction of active nests occurs.

The Federal Clean Water Act contains provisions for regulating impacts to river systems and their tributaries. These mechanisms have been insufficient to prevent major losses of riparian habitat, including habitats occupied by the pygmy-owl.

The Barry M. Goldwater Range, which overlaps the historical distributional range of the pygmy-owl, has an existing policy stating that, for any species that have been identified as state or Federal species of concern, the range will be inventoried, and potential impacts to those species analyzed with other

information gathered. Projects can then be modified to avoid or minimize impacts to the species. The Goldwater Range also has identified any habitats that are unique or significant on the range, including desert washes, bajadas, and dunes. The Goldwater Range has the flexibility to create management plans for any species of concern; however, no such policy currently exists for the pygmy-owl.

The OPCNM, the second major location for pygmy-owls in the State of Arizona, provides protection for the pygmy-owl, as it does for all other natural and cultural resources. This protection has been compared as similar to the takings prohibitions of the MBTA and wildlife taking regulations for the State of Arizona (H. Smith, *in litt.* 1996).

The State of Arizona lists the ferruginous pygmy-owl (subspecies not defined) as endangered (AGFD 1988). However, this designation does not provide special regulatory protection. Arizona regulates the capture, handling, transportation, and take of most wildlife, including *G. b. cactorum*, through game laws, special licenses, and permits for scientific investigation. There are no provisions for habitat protection under Arizona endangered species law.

The State of Texas lists the ferruginous pygmy-owl (subspecies not defined) as threatened (TPWD 1978 and 1984). This designation requires permits for take for propagation, zoological gardens, aquariums, rehabilitation purposes, and scientific purposes (State of Texas 1991). Again, however, there are no provisions for habitat protection. The TPWD has indicated that they have a Memorandum of Understanding with the Texas Department of Transportation (TXDOT), which provides that it is the responsibility of TPWD to protect wildlife resources. Under this Memorandum, TPWD and TXDOT will coordinate on any project within range and in suitable habitat of any State or federally listed threatened or endangered species. Additionally, TPWD reviews seismic exploration on State lands through coordination with the Texas General Land Office. The pygmy-owl is also on the Texas Organization for Endangered Species (TOES) ''watch list'' (TOES 1984).

Most Federal agencies have policies to protect species listed by states as threatened or endangered, and some also protect species that are candidates for Federal listing. However, until agencies develop specific protection guidelines, evaluate their effectiveness, and institutionalize their implementation, it is uncertain whether any general agency policies adequately protect the pygmy-owl and its habitat.

No conservation plans or habitat restoration projects specific to the cactus ferruginous pygmy-owl exist for lands managed by the United States Government, Indian Nations, State agencies, or private parties. The Forest Service, BLM, and Bureau of Reclamation have focussed some attention on modifying livestock grazing practices in recent years, particularly as they affect riparian ecosystems. Several of these projects are in the former range of the pygmy-owl, including some historical nesting locations. In addition, some private landowners in southern Texas are accommodating and funding research and have expressed an interest in carrying out conservation measures to benefit the pygmy-owl.

In summary, individual owls are protected from taking by one or more State and Federal statutes, and some Federal agencies are developing programs to protect riparian areas. However, there are currently no regulatory mechanisms in place that specifically protect pygmy-owl habitat.

E. *Other natural or manmade factors affecting its continued existence.* Environmental, demographic, and genetic vulnerability to random extinction are recognized as interacting factors that might contribute to a population's extinction (Hunter 1996). Environmental random extinction refers to random events, climate, nutrients, water, cover, pollutants, and relationships with other species such as prey, predators, competitors, or pathogens, that may affect habitat quality.

To date, the Service is aware of only one genetic study completed on pygmy-owls in the United States. Using toe clippings or blood samples, Zink *et al.* (1996) extracted DNA from pygmy-owls on the Norias Division of the King Ranch and from Rio Corona, Tamaulipas, Mexico. Data obtained from this study indicate that there is very little genetic difference between birds on the King Ranch and those in Tamaulipas. The authors concluded that any division between the two populations would therefore have occurred recently, likely within the last 75 years.

In addition, the data indicate low levels of genetic variation in the pygmy-owls. Populations without genetic variation are often considered imperiled due to either the effect of low population numbers, increased chance of inbreeding, or both (Soule 1986, Meffe and Carroll 1994).

Pesticides may pose an additional threat to the pygmy-owl where it occurs in floodplain areas that are now largely agricultural. Jahrsdoerfer and Leslie (1988) note that more than 100 pesticides are used on agricultural crops throughout the lower Rio Grande Valley. Pesticide application occurs year-round. Because crops, such as cotton, are grown repeatedly year after year, an accumulation of resistant pesticides may result.

Pesticide contamination is described as ''widespread'' throughout the inland waters of the lower Rio Grande Valley, and includes concentrations of DDT, dieldrin, endrin, lindane, endosulfan, Guthion, and PCB's which exceeded 1976 EPA criteria for propagation of fish and wildlife. Without appropriate precautions, these agents may potentially affect pygmy-owls through direct toxicity or effects on their food base. No quantitative data on the effects of this potential threat on the pygmy-owl are known at this time. While the effects of pesticides such as DDT on the reproductive success of other bird species are well known, there are no data on whether pesticides are currently affecting the pygmy-owl.

The pygmy-owl nests in cavities excavated by woodpeckers in trees or large cacti. Some sources (AGFD 1988) believe that increasing competition with exotic European starling (*Sturnus vulgaris*) for nest cavities may be a threat to cavity nesters like the pygmy-owl. Starlings were first reported as occurring in Arizona in 1946 (Monson 1948).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this subspecies in relation to the Act's definitions of ''endangered'' and ''threatened.'' An endangered species is defined as one which is in danger of extinction throughout all or a significant portion of its range (section 3(6) of the Act). A threatened species is one which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range (section 3(19) of the Act).

In Arizona, the pygmy-owl exists in extremely low numbers, the vast majority of its former habitat can no longer support the species, and much of the remaining habitat is under immediate and significant threat. The Service thus determines that the cactus ferruginous pygmy-owl faces imminent extinction and therefore meets the definition of endangered under the Act. The Service has determined that the pygmy-owl in Texas does not warrant listing as a threatened species. The Service will continue to review the status of this subspecies in Mexico.

Critical Habitat

Critical habitat, is defined in section 3 of the Act as—(i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection, and; (ii) specific areas outside the geographical area which are occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 242.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. Critical habitat was proposed for the cactus ferruginous pygmy-owl in Arizona in the proposed rule. However, because the pygmy-owl has been a sought after species for birding enthusiasts, the Service now believes that the designation of critical habitat and the subsequent publication of location maps and detailed locality descriptions would harm the species rather than aid in its conservation. The Service determines that designation of critical habitat for the cactus ferruginous pygmy-owl in Arizona is not prudent.

Although the Service is not finalizing the portion of the proposed rule to list the Texas population as threatened and critical habitat designation is not an issue for that population, the Service is aware that the Texas population may be impacted by birding activities, as well. However, pygmy-owls in Texas are located on private land, which benefits from bird enthusiasts. The Texas population does not face the same potential harm or harassment threats as the Arizona pygmy-owls occurring on public land because of more limited access to the Texas population. Additionally, some areas of private land that allow birding excursions may be specifically managed to benefit pygmy owls in Texas.

As noted in factor B ''Overutilization for commercial, recreational, scientific, or educational purposes'' in this rule, the pygmy-owl is highly sought by birders concentrating on the remaining known localities in the United States. Excessive uncontrolled attention by birders may affect the occurrence, behavior, and reproductive success of the pygmy-owl. A recently advertised birding excursion in southeast Arizona specifically mentions pygmy-owls as a target species. The Service feels that although the proposed rule and the proposed critical habitat designation contained therein provided maps and detailed location descriptions, no new pygmy-owl localities discovered since the publication of the proposed rule have been disclosed. Pygmy-owl locations in Arizona should not be disclosed because of the potential for harassment and harm.

Additionally, the Service is concerned that the publication of specific pygmy-owl localities in Arizona would make the species and specifically pygmy-owl nests, more vulnerable to acts of vandalism, and increase the difficulties of enforcement. Because of the increased pressures exerted by birding enthusiasts and the possibility of acts of vandalism, the Service believes that conservation of the pygmy-owl is better addressed through the recovery process and through the section 7 consultation process. Designation of critical habitat for the pygmy owl in Arizona is not prudent.

Special Rule

The Service included a proposed special rule under section 4(d) of the Act for the proposed threatened pygmy-owl population in Texas. (See the proposed rule for a discussion of the proposed special rule). However, the Service has determined that the cactus ferruginous pygmy-owl in Texas does not warrant threatened status and thus the special rule is no longer under consideration.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the states and authorizes recovery plans for all listed species. The protection required for Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all endangered and threatened wildlife, respectively. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and the State conservation agencies.

Regulations at 50 CFR 17.3 define the terms ''harm'' and ''harass'' as used under the Act's definition of ''take.'' ''Harm'' is defined as an act which actually kills or injures wildlife. Such acts may include significant habitat modification that impairs essential behavioral patterns, including breeding, feeding, or sheltering. ''Harass'' is defined as an intentional or negligent act or omission which creates a likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavior patterns, including, but not limited to, breeding, feeding, or sheltering.

Permits may be issued to carry out otherwise prohibited activities involving endangered and threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection

with otherwise lawful activities. For threatened species, there are also permits for zoological exhibition, educational purposes, or special purposes consistent with the purpose of the Act.

Service policy published in the Federal Register on July 1, 1994 (59 FR 34272), requires, to the maximum practicable extent at the time a species is listed, identification of those activities that would or would not likely constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of this listing on proposed and ongoing activities within the species' range.

The Service believes that, based on the best available information, the following actions will not result in a violation of section 9—

(1) Clearing of unoccupied habitat;

(2) Removal of trees within occupied habitat that are not known to be used for nesting, and as long as the number removed would not result in significant habitat fragmentation or substantially diminish the overall value of the habitat;

(3) One-time or short-term noise disturbance during the breeding season;

(4) Clearing of vegetation in or along previously disturbed areas, such as fences or roads;

(5) Low level flights more than one mile to the side of or greater than 300 m (1000 ft) above occupied habitat;

(6) Grazing, to a level that does not seriously deplete understory vegetation.

Activities that the Service believes could potentially harm, harass, or otherwise take the pygmy-owl include, but are not limited to—

(1) Removal of nest trees;

(2) Removal of a nest box in use by the pygmy-owl;

(3) Clearing or significant modification of occupied habitat, whether or not the nest tree is included;

(4) Sustained noise disturbance during the breeding season;

(5) Pursuit or harassment of individual birds;

(6) Frequent or lengthy low-level flights over occupied habitat during the breeding season;

(7) Severe overgrazing that results in the removal of understory vegetation.

Questions regarding whether specific activities will constitute a violation of section 9 should be directed to the Field Supervisor of the Service's Arizona Ecological Services Field Office (see **ADDRESSES** section). Requests for copies of the regulations concerning listed species and general inquiries regarding prohibitions and permits may be addressed to the Fish and Wildlife Service, Ecological Services, Endangered Species Permits, P.O. Box 1306, Albuquerque, New Mexico, 87103-1306 (505/248–6282).

National Environmental Policy Act

The Service has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

Required Determinations

The Service has examined this regulation under the Paperwork Reduction Act of 1995 and found it to contain no information collection requirements. This rulemaking was not subject to review by the Office of Management and Budget under Executive Order 12866.

References Cited

A complete list of all references cited herein is available upon request from the Field Supervisor, Arizona Ecological Services Field Office (see **ADDRESSES** section).

Author: The primary authors of this final rule are Mary E. Richardson for Arizona at 602/640–2720 and Bill Seawell for Texas at (512/997–9005 (see **ADDRESSES SECTION**).

Lists of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Section 17.11(h) is amended by adding the following, in alphabetical order under Birds, to the list of Endangered and Threatened Wildlife, to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
BIRDS							
*	*	*	*	*	*	*	
Pygmy-owl, cactus ferruginous.	*Glaucidium brasilianum cactorum.*	U.S.A. (AZ, TX), Mexico.	AZ	E	610	NA	NA
*	*	*	*	*	*	*	

Dated: February 28, 1997.

J.L. Gerst,

Acting Director, Fish and Wildlife Service.

[FR Doc. 97–5788 Filed 3–7–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 648 and 649

[Docket No. 970221036–7036–01; I.D. 012797D]

RIN 0648–AJ48

Fisheries of the Northeastern United States; Framework Adjustments to the Northeast Multispecies and American Lobster Fishery Management Plans

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement measures contained in Framework Adjustment 22 to the Northeast Multispecies Fishery Management Plan (FMP) and Framework Adjustment 4 to the American Lobster FMP. This rule will close certain areas to specific gear types, thereby alleviating the gear conflicts in Southern New England.

EFFECTIVE DATE: March 17, 1997.

ADDRESSES: Copies of Amendment 7 to the Northeast Multispecies FMP, Amendment 5 to the American Lobster FMP, the regulatory impact review and the initial regulatory flexibility analysis, its final supplemental environmental impact statement (FSEIS), and the supporting documents for Framework Adjustment 22 to the Northeast Multispecies FMP and Framework 4 to the American Lobster FMP are available from Christopher B. Kellogg, Acting Executive Director, New England Fishery Management Council, 5 Broadway, (Route 1), Saugus, MA 01906–1097.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, 508–281–9273.

SUPPLEMENTARY INFORMATION: An emergency interim rule to the American Lobster FMP was published on March 27, 1996 (61 FR 13454). This action implemented a prohibition on mobile gear vessels fishing in Restricted Gear Areas I and II, a prohibition on lobster pot vessels fishing in and lobster pots in Restricted Gear Area III, and a requirement that all mobile gear vessels in Restricted Gear Areas I and II and all lobster pot (fixed gear) vessels in Restricted Gear Area III stow their gear while transiting the restricted gear areas. This action became necessary after a New England Fishery Management Council (Council) and Industry-negotiated voluntary agreement concerning gear conflicts failed to resolve the problem.

Regulations implementing Amendment 8 to the Northeast Multispecies, Amendment 6 to the Atlantic Sea Scallop, and Amendment 6 to the American Lobster FMPs became effective on February 10, 1997 (62 FR 1403, January 10, 1997). The regulations added to each FMP a list of management measures from which the Council could select future solutions to gear conflicts through the framework adjustment process. The regulations authorize the Council to recommend adjustments to any of the measures currently in the FMPs.

Framework Adjustment 22 to the Northeast Multispecies FMP and Framework Adjustment 4 to the American Lobster FMP closes four small, defined areas to fishers using certain gears during certain times of the year. Specifically, the action implements a prohibition on mobile gear vessels fishing in Restricted Gear Area I during October 1 through June 15, in Restricted Gear Area IV during June 16 through September 30, in Restricted Gear Area II during November 27 through June 15, and in Restricted Gear Area III during June 16 through November 26, and a prohibition on lobster pot vessels fishing in Restricted Gear Area I during June 16 through September 30, in Restricted Gear Area II during June 16 through November 26, and in Restricted Gear Area III during January 1 through April 30. Vessels may transit these areas provided that all mobile gear is on board the vessel while inside these areas.

This action is necessary because substantial harm and disruption to the fishery is again occurring through gear conflicts since the emergency action expired on June 25, 1996. These conflicts are occurring because of increased targeting of monkfish by mobile gear vessels since the emergency action and the failure of the Council's voluntary industry agreement. The framework measures build upon the emergency action and provisions of the Council's voluntary industry agreement. The measures in this rulemaking were selected from among other options because they are relatively less controversial, as evidenced by the near unanimous support of the Council. The action is expected to reduce gear damage and economic loss.

Direct economic losses to individual lobster vessels from gear loss are reported by the Council to be as high as $125,780. As reported to the Council by eight lobster vessels, the value of lost gear for a partial season totaled more than $290,000. There are approximately 50 active lobster vessels fishing within the gear conflict areas. If the above data are representative of the fleet, the direct economic loss as the result of lost gear was potentially $1.8 million, or more than $36,000 per lobster vessel.

The value of lobster landings during October through June, when lobster vessels move their gear inshore, averaged more than $8.5 million for 1991–93. Landings data showing the magnitude of lost fishing opportunity during 1994 and 1995 are unavailable. Lobster fishers, however, reported setting their gear in a severely restricted band that had a significant effect on catch per trap. Even if the number of traps remained constant and catch per trap only declined 25 percent, the lost revenue could have totaled more than $2.1 million. The total estimated economic loss that could be prevented by taking this action is, therefore, nearly $4 million. Furthermore, the action is consistent with the American Lobster FMP objectives to minimize social, cultural, and economic dislocation in the lobster fishery.

The Council requests publication of the management measures as a final rule after considering the required factors stipulated in the regulations governing the Northeast multispecies fishery and the American lobster fishery and providing supporting analysis for each factor considered. The Regional Administrator, Northeast Region, NMFS, concurs with the Council's recommendation and has determined the framework adjustments should be published as a final rule.

NMFS is amending the multispecies and lobster regulations following the procedure for framework adjustments codified in 50 CFR parts 648 and 649. The Council followed this procedure when making adjustments to the FMPs by developing and analyzing the actions at two Council meetings held on August 21–22 and October 2, 1996.

Comments and Responses

The August 21–22, 1996, Council meeting was the first of two meetings that provided an opportunity for public comment on the frameworks. A draft document containing the proposed management measures and their rationale was available to the public during the second week in August 1996

and notice of the initial and final Council meetings were mailed to approximately 1,900 people and published in the Federal Register. The final public hearing was held on October 2, 1996. Testimony provided by industry members at the public meetings favored the framework adjustments.

Classification

This final rule has been determined to be not significant for the purposes of E.O. 12866.

NMFS recently reinitiated consultation on the Northeast Multispecies and American Lobster FMPs. These consultations were reinitiated as the result of new information concerning the status of the northern right whale and concluded that: (1) The fishing activities carried out under the Northeast Multispecies and American Lobster FMPs are likely to jeopardize the continued existence of the northern right whale; (2) the prosecution of the multispecies and lobster fisheries will not adversely modify right whale critical habitat; and (3) the current fishing practices allowed under the American Lobster and Northeast Multispecies FMPs may affect, but are not likely to jeopardize the continued existence of the harbor porpoise and the distinct population segment of Atlantic salmon stocks found in certain Maine rivers that are both currently proposed to be listed as threatened. The new information provided above does not change the basis for the conclusions of the 1996 Biological Opinion regarding right whales nor does this information change the basis for, or conclusions that, the fishing activities carried out under the American Lobster and Northeast Multispecies FMPs may affect, but are not likely to jeopardize the continued existence of the other endangered and threatened whale and sea turtle species under NMFS jurisdiction.

Public meetings held by the Council to discuss the management measures implemented by this rule provided prior notice and an opportunity for public comment to be heard and considered. The Council considered this action at public meetings on August 21–22, 1996, and October 2, 1996. Therefore, the Assistant Administrator for Fisheries, NOAA (AA), finds cause, under 5 U.S.C. 553(b)(B), to waive the requirement to provide prior notice and an opportunity for public comment as such procedures are unnecessary. The AA finds that under 5 U.S.C. 553(d)(1), the need to have this regulation in place by March 17, 1997, is good cause to waive the 30-day delay in effectiveness of this regulation. Implementation of this regulation by March 17, 1997, will alleviate the increased gear conflicts in Southern New England, while providing enough time to notify fishermen to be prepared for the new requirements.

Because a general notice of proposed rulemaking is not required to be published for this rule by 5 U.S.C. 553 or by any other law, this rule is exempt from the requirement to prepare an initial or final regulatory flexibility analysis under the Regulatory Flexibility Act. As such, none has been prepared.

List of Subjects

50 CFR Part 649

Fisheries.

50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: February 28, 1997.

Gary Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 648 and 649 are amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.2, definitions for ''Beam trawl,'' ''Mobile gear,'' and ''Trawl'' are added, in alphabetical order, to read as follows:

§ 648.2 Definitions.

* * * * *

Beam trawl means gear, consisting of a twine bag attached to a beam attached to a towing wire, designed so that the beam does not contact the bottom. The beam is constructed with sinkers or shoes on either side that support the beam above the bottom or any other modification so that the beam does not contact the bottom. The beam trawl is designed to slide along the bottom rather than dredge the bottom.

* * * * *

Mobile gear means trawls, beam trawls, and dredges that are designed to maneuver with that vessel.

* * * * *

Trawl means gear consisting of a net that is towed, including but not limited to beam trawls, pair trawls, otter trawls, and Danish and Scottish seine gear.

* * * * *

3. In § 648.14, paragraphs (a)(97), (a)(98), and (a)(99) are added to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(97) Fish, or be in the areas described in § 648.81(j)(1), (k)(1), (l)(1), and (m)(1) on a fishing vessel with mobile gear during the time periods specified in § 648.81(j)(2), (k)(2), (l)(2), and (m)(2), except as provided in § 648.81(j)(2), (k)(2), (l)(2), and (m)(2).

(98) Fish, or be in the areas described in § 648.81(j)(1), (k)(1), and (l)(1) on a fishing vessel with lobster pot gear during the time periods specified in § 648.81(j)(2), (k)(2), and (l)(2).

(99) Deploy in or fail to remove lobster pot gear from the areas described in § 648.81(j)(1), (k)(1), and (l)(1), during the time periods specified in § 648.81(j)(2), (k)(2), and (l)(2).

* * * * *

4. In § 648.81, paragraphs (j), (k), (l), and (m) are added to read as follows:

§ 648.81 Closed areas.

* * * * *

(j) *Restricted Gear Area I.* (1) Restricted Gear Area I is defined by straight lines connecting the following points in the order stated:

Point	Latitude	Longitude
Inshore Boundary		
to 120		
69	40°07.9′ N.	68°36.0′ W.
70	40°07.2′ N.	68°38.4′ W.
71	40°06.9′ N.	68°46.5′ W.
73	40°08.1′ N.	68°51.0′ W.
74	40°05.7′ N.	68°52.4′ W.
75	40°03.6′ N.	68°57.2′ W.
76	40°03.65′ N.	69°00.0′ W.
77	40°04.35′ N.	69°00.5′ W.
78	40°05.2′ N.	69°00.5′ W
79	40°05.3′ N.	69°01.1′ W.
80	40°08.9′ N.	69°01.75′ W.
81	40°11.0′ N.	69°03.8′ W.
82	40°11.6′ N.	69°05.4′ W.
83	40°10.25′ N.	69°04.4′ W.
84	40°09.75′ N.	69°04.15′ W.
85	40°08.45′ N.	69°03.6′ W.
86	40°05.65′ N.	69°03.55′ W.
87	40°04.1′ N.	69°03.9′ W.
88	40°02.65′ N.	69°05.6′ W.
89	40°02.00′ N.	69°08.35′ W.
90	40°02.65′ N.	69°11.15′ W.
91	40°00.05′ N.	69°14.6′ W.
92	39°57.8′ N.	69°20.35′ W.
93	39°56.65′ N.	69°24.4′ W.
94	39°56.1′ N.	69°26.35′ W.
95	39°56.55′ N.	69°34.1′ W.
96	39°57.85′ N.	69°35.5′ W.
97	40°00.65′ N.	69°36.5′ W.
98	40°00.9′ N.	69°37.3′ W.
99	39°59.15′ N.	69°37.3′ W.
100	39°58.8′ N.	69°38.45′ W.
102	39°56.2′ N.	69°40.2″W.
103	39°55.75′ N.	69°41.4′ W.
104	39°56.7′ N.	69°53.6′ W.
105	39°57.55′ N.	69°54.05′ W.
106	39°57.4′ N.	69°55.9′ W.
107	39°56.9′ N.	69°57.45′ W.
108	39°58.25′ N.	70°03.0′ W.

Point	Latitude	Longitude
110	39°59.2′ N.	70°04.9′ W.
111	40°00.7′ N.	70°08.7′ W.
112	40°03.75′ N.	70°10.15′ W.
115	40°05.2′ N.	70°10.9′ W.
116	40°02.45′ N.	70°14.1′ W.
119	40°02.75′ N.	70°16.1′ W.
to 181		
Offshore Boundary		
to 69		
120	40°06.4′ N.	68°35.8′ W.
121	40°05.25′ N.	68°39.3′ W.
122	40°05.4′ N.	68°44.5′ W.
123	40°06.0′ N.	68°46.5′ W.
124	40°07.4′ N.	68°49.6′ W.
125	40°05.55′ N.	68°49.8′ W.
126	40°03.9′ N.	68°51.7′ W.
127	40°02.25′ N.	68°55.4′ W.
128	40°02.6′ N.	69°00.0′ W.
129	40°02.75′ N.	69°00.75′ W.
130	40°04.2′ N.	69°01.75′ W.
131	40°06.15′ N.	69°01.95′ W.
132	40°07.25′ N.	69°02.0′ W.
133	40°08.5′ N.	69°02.25′ W.
134	40°09.2′ N.	69°02.95′ W.
135	40°09.75′ N.	69°03.3′ W.
136	40°09.55′ N.	69°03.85′ W.
137	40°08.4′ N.	69°03.4′ W.
138	40°07.2′ N.	69°03.3′ W.
139	40°06.0′ N.	69°03.1′ W.
140	40°05.4′ N.	69°03.05′ W.
141	40°04.8′ N.	69°03.05′ W.
142	40°03.55′ N.	69°03.55′ W.
143	40°01.9′ N.	69°03.95′ W.
144	40°01.0′ N.	69°04.4′ W.
146	39°59.9′ N.	69°06.25′ W.
147	40°00.6′ N.	69°10.05′ W.
148	39°59.25′ N.	69°11.15′ W.
149	39°57.45′ N.	69°16.05′ W.
150	39°56.1′ N.	69°20.1′ W.
151	39°54.6′ N.	69°25.65′ W.
152	39°54.65′ N.	69°26.9′ W.
153	39°54.8′ N.	69°30.95′ W.
154	39°54.35′ N.	69°33.4′ W.
155	39°55.0′ N.	69°34.9′ W.
156	39°56.55′ N.	69°36.0′ W.
157	39°57.95′ N.	69°36.45′ W.
158	39°58.75′ N.	69°36.3′ W.
159	39°58.8′ N.	69°36.95′ W.
160	39°57.95′ N.	69°38.1′ W.
161	39°54.5′ N.	69°38.25′ W.
162	39°53.6′ N.	69°46.5′ W.
163	39°54.7′ N.	69°50.0′ W.
164	39°55.25′ N.	69°51.4′ W.
165	39°55.2′ N.	69°53.1′ W.
166	39°54.85′ N.	69°53.9′ W.
167	39°55.7′ N.	69°54.9′ W.
168	39°56.15′ N.	69°55.35′ W.
169	39°56.05′ N.	69°56.25′ W.
170	39°55.3′ N.	69°57.1′ W.
171	39°54.8′ N.	69°58.6′ W.
172	39°56.05′ N.	70°00.65′ W.
173	39°55.3′ N.	70°02.95′ W.
174	39°56.9′ N.	70°11.3′ W.
175	39°58.9′ N.	70°11.5′ W.
176	39°59.6′ N.	70°11.1′ W.
177	40°01.35′ N.	70°11.2′ W.
178	40°02.6′ N.	70°12.0′ W.
179	40°00.4′ N.	70°12.3′ W.
180	39°59.75′ N.	70°13.05′ W.
181	39°59.3′ N.	70°14.0′ W.
to 119		

(2) *Duration.* (i) *Mobile gear.* From October 1 through June 15, no fishing vessel with mobile gear or person on a fishing vessel with mobile gear may fish, or be in Restricted Gear Area I unless transiting. Vessels may transit this area provided that mobile gear is on board the vessel while inside the area.

(ii) *Lobster pot gear.* From June 16 through September 30, no fishing vessel with lobster pot gear or person on a fishing vessel with lobster pot gear may fish, and no lobster pot gear may be deployed or remain, in Restricted Gear Area I.

(k) *Restricted Gear Area II.* (1) Restricted Gear Area II is defined by straight lines connecting the following points in the order stated:

Point	Latitude	Longitude
Inshore Boundary		
to 1		
49.	40°02.75′ N.	70°16.1′ W.
50.	40°00.7′ N.	70°18.6′ W.
51.	39°59.8′ N.	70°21.75′ W.
52.	39°59.75′ N.	70°25.5′ W.
53.	40°03.85′ N.	70°28.75′ W.
54.	40°00.55′ N.	70°32.1′ W.
55.	39°59.15′ N.	70°34.45′ W.
56.	39°58.9′ N.	70°38.65′ W.
57.	40°00.1′ N.	70°45.1′ W.
58.	40°00.5′ N.	70°57.6′ W.
59.	40°02.0′ N.	71°01.3′ W.
60.	39°59.3′ N.	71°18.4′ W.
61.	40°00.7′ N.	71°19.8′ W.
62.	39°57.5′ N.	71°20.6′ W.
63.	39°53.1′ N.	71°36.1′ W.
64.	39°52.6′ N.	71°40.35′ W.
65.	39°53.1′ N.	71°42.7′ W.
66.	39°46.95′ N.	71°49.0′ W.
67.	39°41.15′ N.	71°57.1′ W.
68.	39°35.45′ N.	72°02.0′ W.
69.	39°32.65′ N.	72°06.1′ W.
70.	39°29.75′ N.	72°09.8′ W.
to 48		
Offshore Boundary		
to 49		
1.	39°59.3′ N.	70°14.0′ W.
2.	39°58.85′ N.	70°15.2′ W.
3.	39°59.3′ N.	70°18.4′ W.
4.	39°58.1′ N.	70°19.4′ W.
5.	39°57.0′ N.	70°19.85′ W.
6.	39°57.55′ N.	70°21.25′ W.
7.	39°57.5′ N.	70°22.8′ W.
8.	39°57.1′ N.	70°25.4′ W.
9.	39°57.65′ N.	70°27.05′ W.
10.	39°58.58′ N.	70°27.7′ W.
11.	40°00.65′ N.	70°28.8′ W.
12.	40°02.2′ N.	70°29.15′ W.
13.	40°01.0′ N.	70°30.2′ W.
14.	39°58.58′ N.	70°31.85′ W.
15.	39°57.05′ N.	70°34.35′ W.
16.	39°56.42′ N.	70°36.8′ W.
21.	39°58.15′ N.	70°48.0′ W.
24.	39°58.3′ N.	70°51.1′ W.
25.	39°58.1′ N.	70°52.25′ W.
26.	39°58.05′ N.	70°53.55′ W.
27.	39°58.4′ N.	70°59.6′ W.
28.	39°59.8′ N.	71°01.05′ W.
29.	39°58.2′ N.	71° 05.85′ W.
30.	39°57.45′ N.	71°12.15′ W.
31.	39°57.2′ N.	71°15.0′ W.
32.	39°56.3′ N.	71°18.95′ W.
33.	39°51.4′ N.	71°36.1′ W.
34.	39°51.75′ N.	71°41.5′ W.
35.	39°50.05′ N.	71°42.5′ W.
36.	39°50.0′ N.	71°45.0′ W.
37.	39°48.95′ N.	71°46.05′ W.
38.	39°46.6′ N.	71°46.1′ W.
39.	39°43.5′ N.	71°49.4′ W.
40.	39°41.3′ N.	71°55.0′ W.
41.	39°39.0′ N.	71°55.6′ W.
42.	39°36.72′ N.	71°58.25′ W.
43.	39°35.15′ N.	71°58.55′ W.
44.	39°34.5′ N.	72°00.75′ W.
45.	39°32.2′ N.	72°02.25′ W.
46.	39°32.15′ N.	72°04.1′ W.
47.	39°28.5′ N.	72°06.5′ W.
48.	39°29.0′ N.	72°09.25′ W. to 70

(2) *Duration.* (i) *Mobile Gear.* From November 27 through June 15, no fishing vessel with mobile gear or person on a fishing vessel with mobile gear may fish, or be in Restricted Gear Area II unless transiting. Vessels may transit this area provided that all mobile gear is on board the vessel while inside the area.

(ii) *Lobster pot gear.* From June 16 through November 26, no fishing vessel with lobster pot gear or person on a fishing vessel with lobster pot gear may fish, and no lobster pot gear may be deployed or remain, in Restricted Gear Area II.

(l) *Restricted Gear Area III.* (1) Restricted Gear Area III is defined by straight lines connecting the following points in the order stated:

Point	Latitude	Longitude
Inshore Boundary		
to 49		
182	40°05.6′ N.	70°17.7′ W.
183	40°06.5′ N.	70°40.05′ W.
184	40°11.05′ N.	70°45.8′ W.
185	40°12.75′ N.	70°55.05′ W.
186	40°10.7′ N.	71°10.25′ W.
187	39°57.9′ N.	71°28.7′ W.
188	39°55.6′ N.	71°41.2′ W.
189	39°55.85′ N.	71°45.0′ W.
190	39°53.75′ N.	71°52.25′ W.
191	39°47.2′ N.	72°01.6′ W.
192	39°33.65′ N.	72°15.0′ W.
to 70		
Offshore Boundary		
to 182		
49	40°02.75′ N.	70°16.1′ W.
50	40°00.7′ N.	70°18.6′ W.
51	39°59.8′ N.	70°21.75′ W.
52	39°59.75′ N.	70°25.5′ W.
53	40°03.85′ N.	70°28.75′ W.
54	40°00.55′ N.	70°32.1′ W.
55	39°59.15′ N.	70°34.45′ W.
56	39°58.9′ N.	70°38.65′ W.

Point	Latitude	Longitude
57	40°00.1′ N.	70°45.1′ W.
58	40°00.5′ N.	70°57.6′ W.
59	40°02.0′ N.	71°01.3′ W.
60	39°59.3′ N.	71°18.4′ W.
61	40°00.7′ N.	71°19.8′ W.
62	39°57.5′ N.	71°20.6′ W.
63	39°53.1′ N.	71°36.1′ W.
64	39°52.6′ N.	71°40.35′ W.
65	39°53.1′ N.	71°42.7′ W.
66	39°46.95′ N.	71°49.0′ W.
67	39°41.15′ N.	71°57.1′ W.
68	39°35.45′ N.	72°02.0′ W.
69	39°32.65′ N.	72°06.1′ W.
70 to 192	39°29.75′ N.	72°09.8′ W.

(2) *Duration.* (i) *Mobile gear.* From June 16 through November 26, no fishing vessel with mobile gear or person on a fishing vessel with mobile gear may fish, or be in Restricted Gear Area III unless transiting.
Vessels may transit this area provided that all mobile gear is on board the vessel while inside the area.

(ii) *Lobster pot gear.*
From January 1 through April 30, no fishing vessel with lobster pot gear or person on a fishing vessel with lobster pot gear may fish, and no lobster pot gear may be deployed or remain, in Restricted Gear Area III.

(m) *Restricted Gear Area IV.* (1) Restricted Gear Area IV is defined by straight lines connecting the following points in the order stated:

Point	Latitude	Longitude
Inshore Boundary		
193	40°13.60′ N.	68°40.60′ W.
194	40°11.60′ N.	68°53.00′ W.
195	40°14.00′ N.	69°04.70′ W.
196	40°14.30′ N.	69°05.80′ W.
197	40°05.50′ N.	69°09.00′ W.
198	39°57.30′ N.	69°25.10′ W.
199	40°00.40′ N.	69°35.20′ W.
200	40°01.70′ N.	69°35.40′ W.
201	40°01.70′ N.	69°37.40′ W.
202	40°00.50′ N.	69°38.80′ W.
203	40°01.30′ N.	69°45.00′ W.
204	40°02.10′ N.	69°45.00′ W.
205	40°07.60′ N.	70°04.50′ W.
206 to 119	40°07.80′ N.	70°09.20′ W.
Offshore Boundary		
69	40°07.90′ N.	68°36.00′ W.
70	40°07.20′ N.	68°38.40′ W.
71	40°06.90′ N.	68°46.50′ W.
72	40°08.70′ N.	68°49.60′ W.
73	40°08.10′ N.	68°51.00′ W.
74	40°05.70′ N.	68°52.40′ W.
75	40°03.60′ N.	68°57.20′ W.
76	40°03.65′ N.	69°00.00′ W.
77.	40°04.35′ N.	69°00.50′ W.
78	40°05.20′ N.	69°00.50′ W.
79	40°05.30′ N.	69°01.10′ W.
80	40°08.90′ N.	69°01.75′ W.
81	40°11.00′ N.	69°03.80′ W.
82	40°11.60′ N.	69°05.40′ W.
83	40°10.25′ N.	69°04.40′ W.
84	40°09.75′ N.	69°04.15′ W.
85	40°08.45′ N.	69°03.60′ W.
86	40°05.65′ N.	69°03.55′ W.
87	40°04.10′ N.	69°03.90′ W.
88	40°02.65′ N.	69°05.60′ W.
89	40°02.00′ N.	69°08.35′ W.
90	40°02.65′ N.	69°11.15′ W.
91	40°00.05′ N.	69°14.60′ W.
92	39°57.80′ N.	69°20.35′ W.
93	39.56.75′ N.	69°24.40′ W.
94	39°56.50′ N.	69°26.35′ W.
95	39.56.80′ N.	69°34.10′ W.
96	39°57.85′ N.	69°35.05′ W.
97	40°00.65′ N.	69°36.50′ W.
98	40°00.90′ N.	69°37.30′ W.
99	39°59.15′ N.	69°37.30′ W.
100	39°58.80′ N.	69°38.45′ W.
102	39°56.20′ N.	69°40.20′ W.
103	39°55.75′ N.	69°41.40′ W.
104	39°56.70′ N.	69°53.60′ W.
105	39°57.55′ N.	69°54.05′ W.
106	39°57.40′ N.	69°55.90′ W.
107	39°56.90′ N.	69°57.45′ W.
108	39°58.25′ N.	70°03.00′ W.
110	39°59.20′ N.	70°04.90′ W.
111	40°00.70′ N.	70°08.70′ W.
112	40°03.75′ N.	70°10.15′ W.
115	40°05.20′ N.	70°10.90′ W.
116	40°02.45′ N.	70°14.1′ W.
119 to 206	40°02.75′ N.	70°16.1′ W.

(2) *Duration.* (i) *Mobile gear.* From June 16 through September 30, no fishing vessel with mobile gear or person on a fishing vessel with mobile gear may fish, or be in Restricted Gear Area IV unless transiting.
Vessels may transit this area provided that all mobile gear is on board the vessel while inside the area.

PART 649—AMERICAN LOBSTER FISHERY

5. The authority citation for part 649 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

6. In § 649.2, definitions for ''Beam trawl,'' ''Mobile gear,'' and ''Trawl'' are added, in alphabetical order, to read as follows:

§ 649.2 Definitions.

* * * * *

Beam trawl means gear, consisting of a twine bag attached to a beam attached to a towing wire, designed so that the beam does not contact the bottom. The beam is constructed with sinkers or shoes on either side that support the beam above the bottom or any other modification so that the beam does not contact the bottom. The beam trawl is designed to slide along the bottom rather than dredge the bottom.

* * * * *

Mobile gear means trawls, beam trawls, and dredges that are designed to maneuver with that vessel.

* * * * *

Trawl means gear consisting of a net that is towed, including but not limited to beam trawls, pair trawls, otter trawls, and Danish and Scottish seine gear.

* * * * *

7. In § 649.8, paragraphs (c)(11), (c)(12), and (c)(13) are added to read as follows:

§ 649.8 Prohibitions.

* * * * *

(c) * * *

(11) Fish, or be in the areas described in § 649.23(a)(1), (b)(1), (c)(1), and (d)(1) on a fishing vessel with mobile gear during the time periods specified in § 649.23(a)(2), (b)(2), (c)(2), and (d)(2), except as provided in § 649.23(a)(2), (b)(2), (c)(2), and (d)(2).

(12) Fish, or be in the areas described in § 649.23(a)(1), (b)(1), and (c)(1) on a fishing vessel with lobster pot gear during the time periods specified in § 649.23(a)(2), (b)(2), and (c)(2).

(13) Deploy or fail to remove lobster pot gear in the areas described in § 649.23(a)(1), (b)(1), and (c)(1) during the time periods specified in § 649.23(a)(2), (b)(2), and (c)(2).

* * * * *

8. Section 649.23 is added to Subpart B to read as follows:

§ 649.23 Restricted gear areas.

(a) *Restricted Gear Area I.* (1) Restricted Gear Area I is defined by straight lines connecting the following points in the order stated:

Point	Latitude	Longitude
Inshore Boundary		
to 120		
69	40°07.9′ N.	68°36.0′ W.
70	40°07.2′ N.	68°38.4′ W.
71	40°06.9′ N.	68°46.5′ W.
72	40°08.7′ N.	68°49.6′ W.
73	40°08.1′ N.	68°51.0′ W.
74	40°05.7′ N.	68°52.4′ W.
75	40°03.6′ N.	68°57.2′ W.
76	40°03.65′ N.	69°00.0′ W.
77	40°04.35′ N.	69°00.5′ W.
78	40°05.2′ N.	69°00.5′ W.
79	40°05.3′ N.	69°01.1′ W.
80	40°08.9′ N.	69°01.75′ W.
81	40°11.0′ N.	69°03.8′ W.
82	40°11.6′ N.	69°05.4′ W.
83	40°10.25′ N.	69°04.4′ W.
84	40°09.75′ N.	69°04.15′ W.
85	40°08.45′ N.	69°03.6′ W.
86	40°05.65′ N.	69°03.55′ W.
87	40°04.1′ N.	69°03.9′ W.
88	40°02.65′ N.	69°05.6′ W.
89	40°02.00′ N.	69°08.35′ W.
90	40°02.65′ N.	69°11.15′ W.
91	40°00.05′ N.	69°14.6′ W.

Point	Latitude	Longitude
92	39°57.8′ N.	69°20.35′ W.
93	39°56.65′ N.	69°24.4′ W.
94	39°56.1′ N.	69°26.35′ W.
95	39°56.55′ N.	69°34.1′ W.
96	39°57.85′ N.	69°35.5′ W.
97	40°00.65′ N.	69°36.5′ W.
98	40°00.9′ N.	69°37.3′ W.
99	39°59.15′ N.	69°37.3′ W.
100	39°58.8′ N.	69°38.45′ W.
102	39°56.2′ N.	69°40.2′ W.
103	39°55.75′ N.	69°41.4′ W.
104	39°56.7′ N.	69°53.6′ W.
105	39°57.55′ N.	69°54.05′ W.
106	39°57.4′ N.	69°55.9′ W.
107	39°56.9′ N.	69°57.45′ W.
108	39°58.25′ N.	70°03.0′ W.
110	39°59.2′ N.	70°04.9′ W.
111	40°00.7′ N.	70°08.7′ W.
112	40°03.75′ N.	70°10.15′ W.
115	40°05.2′ N.	70°10.9′ W.
116	40°02.45′ N.	70°14.1′ W.
119	40°02.75′ N.	70°16.1′ W.
to 181		
Offshore Boundary		
to 69		
120	40°06.4′ N.	68°35.8′ W.
121	40°05.25′ N.	68°39.3′ W.
122	40°05.4′ N.	68°44.5′ W.
123	40°06.0′ N.	68°46.5′ W.
124	40°07.4′ N.	68°49.6′ W.
125	40°05.55′ N.	68°49.8′ W.
126	40°03.9′ N.	68°51.7′ W.
127	40°02.25′ N.	68°55.4′ W.
128	40°02.6′ N.	69°00.0′ W.
129	40°02.75′ N.	69°00.75′ W.
130	40°04.2′ N.	69°01.75′ W.
131	40°06.15′ N.	69°01.95′ W.
132	40°07.25′ N.	69°02.0′ W.
133	40°08.5′ N.	69°02.25′ W.
134	40°09.2′ N.	69°02.95′ W.
135	40°09.75′ N.	69°03.3′ W.
136	40°09.55′ N.	69°03.85′ W.
137	40°08.4′ N.	69°03.4′ W.
138	40°07.2′ N.	69°03.3′ W.
139	40°06.0′ N.	69°03.1′ W.
140	40°05.4′ N.	69°03.05′ W.
141	40°04.8′ N.	69°03.05′ W.
142	40°03.55′ N.	69°03.55′ W.
143	40°01.9′ N.	69°03.95′ W.
144	40°01.0′ N.	69°04.4′ W.
146	39°59.9′ N.	69°06.25′ W.
147	40°00.6′ N.	69°10.05′ W.
148	39°59.25′ N.	69°11.15′ W.
149	39°57.45′ N.	69°16.05′ W.
150	39°56.1′ N.	69°20.1′ W.
151	39°54.6′ N.	69°25.65′ W.
152	39°54.65′ N.	69°26.9′ W.
153	39°54.8′ N.	69°30.95′ W.
154	39°54.35′ N.	69°33.4′ W.
155	39°55.0′ N.	69°34.9′ W.
156	39°56.55′ N.	69°36.0′ W.
157	39°57.95′ N.	69°36.45′ W.
158	39°58.75′ N.	69°36.3′ W.
159	39°58.8′ N.	69°36.95′ W.
160	39°57.95′ N.	69°38.1′ W.
161	39°54.5′ N.	69°38.25′ W.
162	39°53.6′ N.	69°46.5′ W.
163	39°54.7′ N.	69°50.0′ W.
164	39°55.25′ N.	69°51.4′ W.
165	39°55.2′ N.	69°53.1′ W.
166	39°54.85′ N.	69°53.9′ W.
167	39°55.7′ N.	69°54.9′ W.
168	39°56.15′ N.	69°55.35′ W.
169	39°56.05′ N.	69°56.25′ W.
170	39°55.3′ N.	69°57.1′ W.
171	39°54.8′ N.	69°58.6′ W.
172	39°56.05′ N.	70°00.65′ W.
173	39°55.3′ N.	70°02.95′ W.
174	39°56.9′ N.	70°11.3′ W.
175	39°58.9′ N.	70°11.5′ W.
176	39°59.6′ N.	70°11.1′ W.
177	40°01.35′ N.	70°11.2′ W.
178	40°02.6′ N.	70°12.0′ W.
179	40°00.4′ N.	70°12.3′ W.
180	39°59.75′ N.	70°13.05′ W.
181	39°59.3′ N.	70°14.0′ W.
to 119		

(2) *Duration*—(i) *Mobile Gear.* From October 1 through June 15, no fishing vessel with mobile gear or person on a fishing vessel with mobile gear may fish, or be in Restricted Gear Area I unless transiting. Vessels may transit this area provided that all mobile gear is on board the vessel while inside the area.

(ii) *Lobster pot gear.* From June 16 through September 30, no fishing vessel with lobster pot gear or person on a fishing vessel with lobster pot gear may fish, and no lobster pot gear may be deployed or remain, in Restricted Gear Area I.

(b) *Restricted Gear Area II.* (1) Restricted Gear Area II is defined by straight lines connecting the following points in the order stated:

Point	Latitude	Longitude
Inshore Boundary		
to 1		
49	40°02.75′ N.	70°16.1′ W.
50	40°00.7′ N.	70°18.6′ W.
51	39°59.8′ N.	70°21.75′ W.
52	39°59.75′ N.	70°25.5′ W.
53	40°03.85′ N.	70°28.75′ W.
54	40°00.55′ N.	70°32.1′ W.
55	39°59.15′ N.	70°34.45′ W.
56	39°58.9′ N.	70°38.65′ W.
57	40°00.1′ N.	70°45.1′ W.
58	40°00.5′ N.	70°57.6′ W.
59	40°02.0′ N.	71°01.3′ W.
60	39°59.3′ N.	71°18.4′ W.
61	40°00.7′ N.	71°19.8′ W.
62	39°57.5′ N.	71°20.6′ W.
63	39°53.1′ N.	71°36.1′ W.
64	39°52.6′ N.	71°40.35′ W.
65	39°53.1′ N.	71°42.7′ W.
66	39°46.95′ N.	71°49.0′ W.
67	39°41.15′ N.	71°57.1′ W.
68	39°35.45′ N.	72°02.0′ W.
69	39°32.65′ N.	72°06.1′ W.
70	39°29.75′ N.	72°09.8′ W.
to 48		
Offshore Boundary		
to 49		
1	39°59.3′ N.	70°14.0′ W.
2	39°58.85′ N.	70°15.2′ W.
3	39°59.3′ N.	70°18.4′ W.
4	39°58.1′ N.	70°19.4′ W.
5	39°57.0′ N.	70°19.85′ W.
6	39°57.55′ N.	70°21.25′ W.
7	39°57.5′ N.	70°22.8′ W.
8	39°57.1′ N.	70°25.4′ W.
9	39°57.65′ N.	70°27.05′ W.
10	39°58.58′ N.	70°27.7′ W.
11	40°00.65′ N.	70°28.8′ W.
12	40°02.2′ N.	70°29.15′ W.
13	40°01.0′ N.	70°30.2′ W.
14	39°58.58′ N.	70°31.85′ W.
15	39°57.05′ N.	70°34.35′ W.
16	39°56.42′ N.	70°36.8′ W.
21	39°58.15′ N.	70°48.0′ W.
24	39°58.3′ N.	70°51.1′ W.
25	39°58.1′ N.	70°52.25′ W.
26	39°58.05′ N.	70°53.55′ W.
27	39°58.4′ N.	70°59.6′ W.
28	39°59.8′ N.	71°01.05′ W.
29	39°58.2′ N.	71°05.85′ W.
30	39°57.45′ N.	71°12.15′ W.
31	39°57.2′ N.	71°15.0′ W.
32	39°56.3′ N.	71°18.95′ W.
33	39°51.4′ N.	71°36.1′ W.
34	39°51.75′ N.	71°41.5′ W.
35	39°50.05′ N.	71°42.5′ W.
36	39°50.0′ N.	71°45.0′ W.
37	39°48.95′ N.	71°46.05′ W.
38	39°46.6′ N.	71°46.1′ W.
39	39°43.5′ N.	71°49.4′ W.
40	39°41.3′ N.	71°55.0′ W.
41	39°39.0′ N.	71°55.6′ W.
42	39°36.72′ N.	71°58.25′ W.
43	39°35.15′ N.	71°58.55′ W.
44	39°34.5′ N.	72°00.75′ W.
45	39°32.2′ N.	72°02.25′ W.
46	39°32.15′ N.	72°04.1′ W.
47	39°28.5′ N.	72°06.5′ W.
48	39°29.0′ N.	72°09.25′ W.
to 70		

(2) *Duration*—(i) *Mobile Gear.* From November 27 through June 15, no fishing vessel with mobile gear or person on a fishing vessel with mobile gear may fish, or be in Restricted Gear Area II unless transiting Vessels may transit this area provided that all mobile gear is on board the vessel while inside the area.

(ii) *Lobster pot gear.* From June 16 through November 26, no fishing vessel with lobster pot gear or person on a fishing vessel with lobster pot gear may fish, and no lobster pot gear may be deployed or remain, in Restricted Gear Area II.

(c) *Restricted Gear Area III.* (1) Restricted Gear Area III is defined by straight lines connecting the following points in the order stated, except as specified in paragraph (c)(3) of this section:

Point	Latitude	Longitude
Inshore Boundary		
to 49		
182	40°05.6′ N.	70°17.7′ W.
183	40°06.5′ N.	70°40.05′ W.

Point	Latitude	Longitude
184	40°11.05′ N.	70°45.8′ W.
185	40°12.75′ N.	70°55.05′ W.
186	40°10.7′ N.	71°10.25′ W.
187	39°57.9′ N.	71°28.7′ W.
188	39°55.6′ N.	71°41.2′ W.
189	39°55.85′ N.	71°45.0′ W.
190	39°53.75′ N.	71°52.25′ W.
191	39°47.2′ N.	72°01.6′ W.
192	39°33.65′ N.	72°15.0′ W.
to 70		
Offshore Boundary		
to 182		
49	40°02.75′ N.	70°16.1′ W.
50	40°00.7′ N.	70°18.6′ W.
51	39°59.8′ N.	70°21.75′ W.
52	39°59.75′ N.	70°25.5′ W.
53	40°03.85′ N.	70°28.75′ W.
54	40°00.55′ N.	70°32.1′ W.
55	39°59.15′ N.	70°34.45′ W.
56	39°58.9′ N.	70°38.65′ W.
57	40°00.1′ N.	70°45.1′ W.
58	40°00.5′ N.	70°57.6′ W.
59	40°02.0′ N.	71°01.3′ W.
60	39°59.3′ N.	71°18.4′ W.
61	40°00.7′ N.	71°19.8′ W.
62	39°57.5′ N.	71°20.6′ W.
63	39°53.1′ N.	71°36.1′ W.
64	39°52.6′ N.	71°40.35′ W.
65	39°53.1′ N.	71°42.7′ W.
66	39°46.95′ N.	71°49.0′ W.
67	39°41.15′ N.	71°57.1′ W.
68	39°35.45′ N.	72°02.0′ W.
69	39°32.65′ N.	72°06.1′ W.
70	39°29.75′ N.	72°09.8′ W.
to 192		

(2) *Duration*—(i) *Mobile Gear.* From June 16 through November 26, no fishing vessel with mobile gear or person on a fishing vessel with mobile gear may fish, or be in Restricted Gear Area III unless transiting. Vessels may transit this area provided that all mobile gear is on board the vessel while inside the area.

(ii) *Lobster pot gear.* From January 1 through April 30, no fishing vessel with lobster pot gear or person on a fishing vessel with lobster pot gear may fish, and no lobster pot gear may be deployed or remain, in Restricted Gear Area III.

(d) *Restricted Gear Area IV.* (1) Restricted Gear Area IV is defined by straight lines connecting the following points in the order stated:

Point	Latitude	Longitude
Inshore Boundary		
193	40°13.60′ N.	68°40.60′ W.
194	40°11.60′ N.	68°53.00′ W.
195	40°14.00′ N.	69°04.70′ W.
196	40°14.30′ N.	69°05.80′ W.
197	40°05.50′ N.	69°09.00′ W.
198	39°57.30′ N.	69°25.10′ W.
199	40°00.40′ N.	69°35.20′ W.
200	40°01.70′ N.	69°35.40′ W.
201	40°01.70′ N.	69°37.40′ W.
202	40°00.50′ N.	69°38.80′ W.
203	40°01.30′ N.	69°45.00′ W.
204	40°02.10′ N.	69°45.00′ W.
205	40°07.60′ N.	70°04.50′ W.
206	40°07.80′ N.	70°09.20′ W.
to 119		
Offshore Boundary		
to 193		
69	40°07.90′ N.	68°36.00′ W.
70	40°07.20′ N.	68°38.40′ W.
71	40°06.90′ N.	68°46.50′ W.
72	40°08.70′ N.	68°49.60′ W.
73	40°08.10′ N.	68°51.00′ W.
74	40°05.70′ N.	68°52.40′ W.
75	40°03.60′ N.	68°57.20′ W.
76	40°03.65′ N.	69°00.00′ W.
77	40°04.35′ N.	69°00.50′ W.
78	40°05.20′ N.	69°00.50′ W.
79	40°05.30′ N.	69°01.10′ W.
80	40°08.90′ N.	69°01.75′ W.
81	40°11.00′ N.	69°03.80′ W.
82	40°11.60′ N.	69°05.40′ W.
83	40°10.25′ N.	69°04.40′ W.
84	40°09.75′ N.	69°04.15′ W.
85	40°08.45′ N.	69°03.60′ W.
86	40°05.65′ N.	69°03.55′ W.
87	40°04.10′ N.	69°03.90′ W.
88	40°02.65′ N.	69°05.60′ W.
89	40°02.00′ N.	69°08.35′ W.
90	40°02.65′ N.	69°11.15′ W.
91	40°00.05′ N.	69°14.60′ W.
92	39°57.80′ N.	69°20.35′ W.
93	39.56.75′ N.	69°24.40′ W.
94	39°56.50′ N.	69°26.35′ W.
95	39.56.80′ N.	69°34.10′ W.
96	39°57.85′ N.	69°35.05′ W.
97	40°00.65′ N.	69°36.50′ W.
98	40°00.90′ N.	69°37.30′ W.
99	39°59.15′ N.	69°37.30′ W.
100	39°58.80′ N.	69°38.45′ W.
102	39°56.20′ N.	69°40.20′ W.
103	39°55.75′ N.	69°41.40′ W.
104	39°56.70′ N.	69°53.60′ W.
105	39°57.55′ N.	69°54.05′ W.
106	39°57.40′ N.	69°55.90′ W.
107	39°56.90′ N.	69°57.45′ W.
108	39°58.25′ N.	70°03.00′ W.
110	39°59.20′ N.	70°04.90′ W.
111	40°00.70′ N.	70°08.70′ W.
112	40°03.75′ N.	70°10.15′ W.
115	40°05.20′ N.	70°10.90′ W.
116	40°02.45′ N.	70°14.1′ W.
119	40°02.75′ N.	70°16.1′ W.
to 206		

(2) *Duration*—(i) *Mobile Gear.* From June 16 through September 30, no fishing vessel with mobile gear or person on a fishing vessel with mobile gear may fish, or be in Restricted Gear Area IV unless transiting. Vessels may transit this area provided that all mobile gear is on board the vessel while inside the area.

[FR Doc. 97–5478 Filed 3–5–97; 10:22 am]

BILLING CODE 3510–22–P

50 CFR Part 679

[Docket No. 961107312–7021–02; I.D. 030497A]

Fisheries of the Exclusive Economic Zone Off Alaska; Inshore Component Pollock in the Aleutian Islands Subarea

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason adjustment; request for comments.

SUMMARY: NMFS issues an inseason adjustment closing directed fishing for pollock by vessels catching pollock for processing by the inshore component in the Aleutian Islands subarea (AI) of the Bering Sea and Aleutian Islands management area (BSAI). An adjustment to the normal time of closure is necessary to prevent the underharvest of pollock by vessels catching pollock for processing by the inshore component in the AI of the BSAI.

DATES: 2400 hrs, Alaska local time (A.l.t.), March 4, 1997, until 2400 hrs, A.l.t., December 31, 1997. Comments must be received no later than 1630 hrs, A.l.t., March 19, 1997 (see **ADDRESSES**).

ADDRESSES: Comments may be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn. Lori Gravel, or be delivered to the fourth floor of the Federal Building, 709 West 9th Street, Juneau, AK.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(c)(3)(iii), the allocation of the pollock total allowable catch for vessels catching pollock for processing by the inshore component in the AI was established by the Final 1997 Harvest Specifications for Groundfish of the BSAI (62 FR 7168, February 18, 1997) as 9,065 metric tons (mt).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has

determined that the allocation of the pollock total allowable catch for vessels catching pollock for processing by the inshore component in the AI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 8,565 mt, and is setting aside the remaining 500 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for pollock by vessels catching pollock for processing by the inshore component in the AI.

Current information shows the catching capacity of vessels catching pollock for processing by the inshore component is in excess of 1,400 mt per day.

Section 679.23(b) specifies that the time of all openings and closures of fishing seasons other than the beginning and end of the calendar fishing year is 1200 hrs, A.l.t. The Regional Administrator has determined that the remaining portion of the allocation to the inshore component would be underharvested if a 1200 hrs closure were allowed to occur.

In accordance with § 679.25(a)(1)(i), NMFS is adjusting the season for pollock by vessels catching pollock for processing by the inshore component in the AI subarea of the BSAI by closing directed fishing at 2400 hrs, A.l.t., March 4, 1997. NMFS is taking this action to prevent the underharvest of the pollock allocation to vessels catching pollock for processing by the inshore component in the AI of the BSAI as authorized by § 679.25(a)(2)(i)(C). In accordance with § 679.25(a)(2)(iii), NMFS has determined that closing the season at 2400 hrs, A.l.t., on March 4, 1997, is the least restrictive management adjustment to harvest the pollock allocated to vessels catching pollock for processing by the inshore component in the AI of the BSAI and will allow other fisheries to continue in noncritical areas and time periods.

The Assistant Administrator for Fisheries, NOAA, finds for good cause that providing prior notice and public comment or delaying the effective date of this action is impracticable and contrary to the public interest. Without this inseason adjustment, the pollock allocation for vessels catching pollock for processing by the inshore component in the AI of the BSAI would be underharvested, resulting in an economic loss of more than 600,000 dollars. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until March 19, 1997.

Classification

This action is required by § 679.25 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 4, 1997.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–5764 Filed 3–4–97; 4:43 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 62, No. 46
Monday, March 10, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–CE–17–AD]

RIN 2120–AA64

Airworthiness Directives; Pilatus Britten-Norman Ltd. BN–2, BN–2A, BN–2B, and BN–2T Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to Pilatus Britten-Norman Ltd. (Pilatus) BN–2, BN–2A, BN–2B, and BN–2T series airplanes. The proposed action would require modifying the upper engine mounting brackets on the wing front spar as terminating action for the repetitive inspections that were required in AD 84–23–06, which is the subject of a proposal to eliminate the Pilatus BN–2, BN–2A, BN–2B, and BN–2T series airplanes from its applicability in a separate action. The proposed action is prompted by several reports of cracks in the upper engine mounting brackets and a new terminating action to eliminate the repetitive inspections for Pilatus BN–2, BN–2A, BN–2B, and BN–2T series airplanes. The actions specified by the proposed AD are intended to prevent the failure of the engine mounting brackets on the wing mounted engines which could possibly cause structural failure of the airplane.

DATES: Comments must be received on or before May 12, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–CE–17–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Pilatus Britten-Norman Ltd., Bembridge, Isle of Wight, United Kingdom PO35 5PR; telephone 44–1983 872511; facsimile 44–1983 873246. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Project Engineer, FAA, Brussels Aircraft Certification Division, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium; telephone (322) 513.3830, ext. 2716; facsimile (322) 230.6899; or Mr. S. M. Nagarajan, Project Officer, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64105; telephone (816) 426–6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 96–CE–17–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–CE–17–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Events Leading to the Proposed Action

The Civil Airworthiness Authority (CAA), which is the airworthiness authority for the United Kingdom (UK), notified the FAA that an unsafe condition may exist on Pilatus BN–2, BN–2A, BN–2B, and BN–2T series airplanes. The UK CAA reports cracking in the upper engine mounting brackets on the wing mounted engines attached to the wing front spar. This condition, if not detected and corrected, could result in failure of the engine mounting brackets of the wing mounted engines and possible structural failure and loss of control of the airplane.

The Pilatus BN–2, BN–2A, BN–2B, and BN–2T series airplanes are included in the applicability section of AD 84–23–06. A proposal to remove these airplanes from the applicability of AD 84–23–06 is being issued in a separate revised Notice of Proposed Rulemaking. The repetitive inspections that have been required by AD 84–23–06 would be terminated with a modifying action that is only applicable to the BN–2, BN–2A, BN–2B, and BN–2T series airplanes in this proposed action.

The FAA's Aging Aircraft Policy

The FAA has determined that reliance on critical repetitive inspections on aging commuter-class airplanes carries an unnecessary safety risk when a design change exists that could eliminate or, in certain instances, reduce the number of those critical inspections. In determining what inspections are critical, the FAA considers (1) the safety consequences if the known problem is not detected during the inspection; (2) the probability of the problem not being detected during the inspection; (3) whether the inspection area is difficult to access; and (4) the possibility of damage to an adjacent structure as a result of the problem.

These factors have led the FAA to establish an aging commuter-class

aircraft policy that requires incorporating a known design change when it could replace a critical repetitive inspection.

Based on its aging commuter-class aircraft policy and after reviewing all available information, the FAA has determined that AD action should be taken to modify the upper engine wing mounting brackets of the affected airplanes to eliminate the repetitive short-interval inspections, and to prevent failure of the upper engine wing mounting brackets on wing mounted engines which could possibly cause structural failure of the airplane.

Related Service Information

Pilatus issued Service Bulletin No. BN–2/SB.61, Issue 5, dated December 9, 1981, which specifies procedures for modifying the engine mounting brackets on the wing mounted engines and terminating the repetitive inspection after accomplishing the modification.

The UK CAA classified these service bulletins as mandatory and has issued AD No. 0619 in order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Determination

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the UK CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the UK CAA, reviewed all available information including the service information referenced above, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop in other Pilatus BN–2, BN–2A, BN–2B, and BN–2T series airplanes of the same type design registered in the United States, the proposed AD would require initially inspecting the upper engine mounting brackets on the wing mounted engines for:

(1) Cracks at the bolt-holes,

(2) Elongation of the bolt holes,

(3) Fretting within the holes,

(4) Cracks at the rivet holes,

(5) Distortion or delamination of the lugs, and that

(6) The bearings are the correct length and the bolts are not threadbound.

If there is no evidence of damage or defects similar to any of the above-mentioned items, continue to repetitively inspect at regular intervals until the accumulation of 2,000 hours time-in-service after the effective date of the proposed AD, at which time the proposed AD would require accomplishing Pilatus Modification NB/M/1147.

If any damage or defects are found similar to any of the six items previously mentioned, prior to further flight, the proposed action would require accomplishing Pilatus Modification NB/M/1147. This modification consists of replacing damaged brackets, bolts, and bushes with parts of an improved design. Accomplishing this modification is considered a terminating action to the proposed repetitive inspections.

Cost Impact

The FAA estimates that 112 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 37 workhours per airplane to accomplish the initial inspection and modification, and that the average labor rate is approximately $60 an hour. Parts cost approximately $800 per airplane to accomplish the modification. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $338,240 or $3,020 per airplane. This figure is based on the initial inspection and modification only. It does not take into account the cost for the repetitive inspections that may be incurred over the life of the airplane until the modification is accomplished. The FAA has no way to determine the number of owners/operators that may have already accomplished the proposed action.

The Proposed Action's Impact Utilizing the FAA's Aging Commuter Class Aircraft Policy

The intent of the FAA's aging commuter airplane program is to ensure safe operation of commuter-class airplanes that are in commercial service without adversely impacting private operators. Of the approximately 112 airplanes in the U.S. registry that would be affected by the proposed AD, the FAA has determined that approximately 18 percent are operated in scheduled passenger service by 11 different operators. A significant number of the remaining 82 percent are operated in other forms of air transportation such as air cargo and air taxi.

The proposed AD allows 2,000 hours time-in-service (TIS) after the effective date of the proposed AD before mandatory accomplishment of the design modification. The average utilization of the fleet for those airplanes in commercial commuter service is approximately 25 to 50 hours TIS per week. Based on these figures, operators of commuter-class airplanes involved in commercial operation would have to accomplish the proposed modification within 5 to 10 calendar months after the proposed AD would become effective. For private owners, who typically operate between 100 to 200 hours TIS per year, this would allow 5 to 10 years before the proposed modification would be mandatory.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Pilatus Britten-Norman Ltd.: Docket No. 96–CE–17–AD.

Applicability: Models BN–2 (serial numbers 1 through 2033), BN–2T (serial numbers 419, and 2030 through 2033), and Models BN–2A and BN–2B (serial numbers 1 through 2116), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 500 hours time-in-service (TIS) after the last compliance with AD 84–23–06, or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished.

To prevent failure of the upper mounting brackets on both wing mounted engines which could possibly cause structural failure of the airplane, accomplish the following:

(a) Inspect the upper mounting brackets, bolts, and bushings on both wing mounted engines for:

(1) Cracks at the bolt holes,

(2) Elongation of the bolt holes,

(3) Fretting within the bolt holes,

(4) Cracks at the rivet holes,

(5) Distortion or delamination of the lugs, and

(6) Correct bearing length and inspect for bolts that are threadbound, in accordance with the ''ACTION—Inspection'' section in Pilatus Britten-Norman (Pilatus) Service Bulletin (SB) No. BN–2/SB.61, Issue 5, dated December 9, 1981.

(b) If the inspection reveals any evidence of damage or defects similar to the items in paragraphs (a)(1) through (a)(6), prior to further flight, accomplish Pilatus Modification NB/M/1147 by replacing the brackets, bushes, and bolts with brackets (part number (P/N) NB–20–D–7165), bushes (P/N NB–20–A4–7171), and bolts of improved design in accordance with paragraphs 1, 2, 3, and 5 of the ''ACTION—Rectification/Modification'' section in Pilatus SB No. BN–2/SB.61, Issue 5, dated December 9, 1981.

(c) If damage or defects are found on just one of the two brackets on each engine, then both brackets must be replaced, prior to further flight, in accordance with paragraph 1 of the ''ACTION—Rectification/Modification'' section in Pilatus SB No. BN–2/.SB.61, Issue 5, dated December 9, 1981.

(d) If no damage or defects are found similar to the items in paragraphs (a)(1) through (a)(6) of this AD, continue to inspect at intervals not to exceed 500 hours TIS until the accumulation of 2,000 hours TIS after the effective date of this AD, at which time Modification NB/M/1147 must be accomplished on both upper mounting brackets on both engines in accordance with paragraphs 1, 2, 3, and 5 of the ''ACTION—Rectification/Modification'' section of Pilatus SB No. BN–2/SB.61, Issue 5, dated December 9, 1981.

(e) Accomplishing Modification NB/M/1147 in the ''ACTION—Rectification/Modification'' section of Pilatus SB No. BN–2/SB.61, Issue 5, dated December 9, 1981, is considered terminating action to the repetitive inspections required in paragraph (d) of this AD.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Division, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium or the Manager, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Division or the Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Brussels Aircraft Certification Division or the Small Airplane Directorate.

(h) All persons affected by this directive may obtain copies of the document referred to herein upon request to Pilatus Britten-Norman Ltd., Bembridge, Isle of Wight, United Kingdom PO35 5PR; or may examine this document at the FAA, central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on February 28, 1997.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–5846 Filed 3–7–97; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 84–CE–18–AD]

RIN 2120–AA64

Airworthiness Directives; Pilatus Britten-Norman Ltd. BN–2, BN–2A, BN–2B, BN–2T, and BN–2A Mk 111 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to revise 84–23–06, which currently requires repetitively inspecting the upper mounting brackets, bolts, and bushings on wing mounted engines for cracks, wear, and insufficient fit on certain Pilatus Britten-Norman Ltd. (Pilatus) BN–2, BN–2A, BN–2B, BN–2T, and BN–2A Mk 111 series airplanes, and replacing any cracked, worn, or ill-fitting part. The proposed action would retain the same action required in AD 84–23–06, except the action would only be applicable to the BN–2A Mk 111 series airplanes. The proposed action is prompted by a terminating modification only applicable to the Pilatus BN–2, BN–2A, BN–2B, BN–2T series airplanes that would remove them from the applicability of AD 84–23–06. The actions specified by the proposed AD are intended to prevent failure of the upper mounting brackets on wing mounted engines which could possibly cause structural failure of the airplane.

DATES: Comments must be received on or before May 12, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 84–CE–18–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Pilatus Britten-Norman Limited, Bembridge, Isle of Wight, United Kingdom PO35 5PR; telephone 44–1983 872511; facsimile 44–1983 873246. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT:

Mr. Tom Rodriguez, Program Officer, Brussels Aircraft Certification Division, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, b–1000 Brussels, Belgium; telephone (322) 508–2715; facsimile (322) 230–6899;

or

Mr. S. M. Nagarajan, Project Officer, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the

proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 84–CE–18–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 84–CE–18–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Civil Airworthiness Authority (CAA), which is the airworthiness authority for the United Kingdom (UK), notified the FAA that an unsafe condition may exist on certain Pilatus BN–2A Mk 111 series airplanes. The CAA reports that several incidents have revealed cracking, wear, and ill-fitting parts in the upper wing mount brackets on the wing mounted engines which could eventually result in structural failure of the wing. This condition, if not detected and corrected, could result in failure of the engine mounting brackets of the wing mounted engines and possible structural failure and loss of control of the airplane. Pilatus has issued service bulletin BN–2/SB.61, Issue 5, dated December 9, 1981, which specifies inspecting for cracked, worn, or ill-fitting parts, and if found, repair and continue to repetitively inspect.

This service bulletin is also referenced in AD 84–23–06. The proposed action would be a revision to AD 84–23–06 to remove the Pilatus BN–2, BN–2A, BN–2B and BN–2T series airplanes from the applicability of AD 84–23–06. Since publication of this AD, a modification terminating the repetitive inspections became available to the Pilatus BN–2, BN–2A, BN–2B and BN–2T series airplanes that is not applicable to the BN–2A Mk 111 series airplanes. The terminating modification is proposed in a Notice for Proposed Rulemaking (NPRM) Docket No. 96–CE–17–AD. The Pilatus Service Bulletin (SB) BN–2/SB.61, Issue 5, dated December 9, 1981, is also referenced in this NPRM for the terminating action applicable to the Pilatus BN–2, BN–2A, BN–2B and BN–2T series airplanes.

The UK CAA classified this service bulletin as mandatory and issued AD No. 0619 in order to assure the continued airworthiness of these airplanes in the United Kingdom.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the UK CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the UK CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop in other Pilatus BN–2A Mk 111 series airplanes of the same type design registered for operation in the United States, the proposed AD would revise AD 84–23–06 to eliminate Pilatus BN–2, BN–2A, BN–2B, BN–2T series airplanes from the applicability of this AD and would retain the Pilatus BN–2A Mk 111 series airplanes in the applicability section of the proposed AD, and would also retain the requirement for:

(1) Visually inspecting the upper engine to wing mounting brackets for minimum lug bolt hole-to-edge distance (0.2625 inches),

(2) Inspecting for elongation of the bolt holes, distortion, delamination, cracks, flaking, and corrosion, and

(3) Inspecting the bolts for correct bearing length, and loose and fretted bushings.

If the lug bolt hole-to-edge distance is less than the specified minimum, prior to further flight, correct the defects. If the bolt holes are elongated, or if any bushings are loose or fretted, modify and correct. If any mounting bracket is cracked, modify both brackets on the same engine installation (left side engine or right side engine) concurrently (even if only one bracket is defective). If any lug is distorted or delaminated, replace the deficient part. If any part is corroded or flaking, replace the part. If any of the bolts are of incorrect length or damaged, replace with new units of the correct length and continue to repetitively inspect.

Cost Impact

The FAA estimates that 9 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 2 workhours per airplane to accomplish the proposed action and the average labor rate is approximately $60 an hour. There are no parts required for the initial inspection. Based on these figures, the total cost impact for the initial inspection of the proposed AD on U.S. operators is estimated to be $1,080 or $120 per airplane. This figure is based on the proposed initial inspection cost and does not include workhours for repetitive inspections. The FAA has no way to determine how many of these airplanes have already accomplished this action.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Airworthiness Directive (AD) 84–23–06, Amendment 39–4942, (49 FR 43621, October 31, 1984), and adding a new AD to read as follows:

Pilatus Britten-Norman Ltd.: Docket No. 84–CE–18–AD; Revises AD 84–23–06, Amendment 39–4942.

Applicability: BN–2T Mk 111 series airplanes (all serial numbers), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Note 2: The paragraph structure of this AD is as follows:

Level 1: (a), (b), (c), etc.
Level 2: (1), (2), (3), etc.
Level 3: (i), (ii), (iii), etc.

Level 2 and Level 3 structures are designations of the Level 1 paragraph they immediately follow.

Compliance: Required initially upon the accumulation of 500 hours time-in-service (TIS) or within the next 50 hours TIS, whichever occurs later, unless already accomplished (compliance with AD 84–23–06) and thereafter at intervals not to exceed 500 hours TIS.

To prevent failure of the upper mounting brackets on both wing mounted engines which could possibly cause structural failure of the airplane, accomplish the following:

(a) Visually inspect in accordance with paragraphs 1 through 6 of the ''Inspection'' section of the Pilatus Britten-Norman (Pilatus) Service Bulletin (SB) No. BN–2/SB.61, Issue 5, dated December 9, 1981 the following areas:

(1) The upper engine to wing mounting brackets for:

(i) Minimum lug bolt hole-to-edge distance (0.2625 inches), elongation of the bolt holes, distortion, delamination, cracks, flaking, and corrosion;

(ii) The bolts for correct bearing length; and

(iii) Loose and fretted bushings.

(2) Prior to further flight, correct defects in accordance with the following:

(i) If the lug bolt hole-to-edge distance is less than the specified minimum, correct in accordance with paragraph 3 of the ''Rectification/Modification'' section of Pilatus SB No. BN–2/SB.61, Issue 5, dated December 9, 1981;

(ii) If the bolt holes are elongated, or if any bushings are loose or fretted, modify and correct in accordance with paragraph 4 of the ''Rectification/Modification'' section of Pilatus SB No. BN–2/SB.61, Issue 5, dated December 9, 1981;

(iii) If any mounting bracket is cracked, modify both brackets on the same engine installation (left side engine or right side engine) concurrently (even if only one bracket is defective) in accordance with paragraph 1 of the ''Rectification/Modification'' section of Pilatus SB No. BN–2/SB.61, Issue 5, dated December 9, 1981;

(iv) If any lug is distorted or delaminated, replace the deficient part in accordance with paragraphs 1 and 2 of the ''Rectification/Modification'' section of Pilatus SB No. BN–2/SB.61, Issue 5, dated December 9, 1981;

(v) If any inspected part is corroded or flaking, replace the part in accordance with paragraph 1 of the ''Rectification/Modification'' section of Pilatus SB No. BN–2/SB.61, Issue 5, dated December 9, 1981; and

(vi) If any of the bolts are of incorrect length or damaged, replace with new units of the correct length in accordance with paragraphs 1 and 2 of the ''Rectification/Modification'' section of Pilatus SB No. BN–2/SB.61, Issue 5, dated December 9, 1981.

(b) The intervals between the repetitive inspections required by this AD may be adjusted up to 10 percent of the specified interval to allow for accomplishing these inspections concurrent with the other scheduled maintenance of the airplane.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Division, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium; telephone (322) 508.2715; facsimile(322) 230.6899; or Mr. S. M. Nagarajan, Project Officer, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Office or the Manager, Small Airplane Directorate.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Brussels Aircraft Certification Division or the Small Airplane Directorate.

(e) All persons affected by this directive may obtain copies of the document referred to herein upon request to Pilatus Britten-Norman Limited, Bembridge, Isle of Wight, United Kingdom PO35 5PR; telephone 44–1983 872511; facsimile 44–1983 873246; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on February 28, 1997.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–5840 Filed 3–7–97; 8:45 am]

BILLING CODE 4910–13–U

Office of the Secretary

14 CFR Parts 221, 250, 293

[Docket No. OST–97–2050; Notice No. 97–1]

RIN 2105–AC61

Exemption From Passenger Tariff-Filing Requirements in Certain Instances

AGENCY: Office of International Aviation, Office of the Secretary, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department proposes to exempt U.S. and foreign air carriers from the statutory and regulatory duty to file with DOT international passenger tariffs in certain instances, subject to the reimposition of the duty in specific cases when consistent with the public interest. In addition, the Department proposes to reissue a new version of part 221 that eliminates most of the traditional paper format and filing procedures set forth in the present version of 14 CFR part 221. This proposal is made on the Department's initiative in order to streamline government operations and eliminate unjustified regulatory burdens.

DATES: Comments should be received no later than May 9, 1997. Since the proposal eliminates various requirements and creates no additional burdens, a final rule based on this proposal would be effective immediately upon issuance. However, the cancellation of certain tariff rules would take place 90 days after the date of effectiveness of the notice provided in § 293.10 of new part 293.

ADDRESSES: Five (5) copies of any comments should be sent to the Documentary Services Division, C–55, U.S. Department of Transportation, 400

7th Street, SW, Washington, D.C. 20590–0002, and should refer to this docket. Acknowledgment of comments require you to include a stamped, self-addressed postcard that the Docket Clerk will time and date-stamp, and return.

FOR FURTHER INFORMATION CONTACT: Mr. John H. Kiser or Mr. Keith A. Shangraw, Office of the Secretary, Office of International Aviation, X–43, Department of Transportation, at the address above. Telephone: (202) 366–2435.

SUPPLEMENTARY INFORMATION:

Background

Section 41504 of Title 49 of the United States Code (the Code), formerly section 403(a) of the Federal Aviation Act of 1958, as amended, requires every U.S. and foreign air carrier to file with the Department, and to keep open for public inspection, tariffs showing all prices for ''foreign air transportation'' between points served by that carrier, as well as all rules relating to that transportation to the extent required by the Department. This includes passenger fares, related charges and governing rules. 14 CFR part 221 establishes the detailed tariff-filing rules and authority for approvals, rejections and waivers. Once approved by the respective government aviation authorities, if required under the relevant bilateral agreements and/or the Code, these tariffs become legally binding terms in the contract of carriage for international air transportation.

In his Regulatory Reinvention Initiative Memorandum of March 4, 1995, President Clinton directed Federal agencies to conduct a page-by-page review of all of their regulations and to ''eliminate or revise those that are outdated or otherwise in need of reform.'' In response to that directive, the Department has undertaken a review of its aviation economic regulations contained in 14 CFR Chapter II to determine whether changes should be made to promote economic growth, create jobs, or eliminate unnecessary costs or other burdens on the economy. Among the regulations reviewed are those governing the filing of tariffs by airlines for their foreign air transportation, set forth in 14 CFR part 221.

In two recently completed rulemaking proceedings, the Department has determined that the amount of tariff material filed by carriers exceeds our regulatory requirements in certain respects, that alternative methods exist for protecting consumers and other elements of the public interest which are more effective than filed tariffs, and that procedures should be developed to permit the electronic filing and review of those tariffs which should continue to be filed. On November 30, 1995, the Department published a final rule exempting carriers from their regulatory duty to file tariffs for the foreign air transportation of cargo. On April 24, 1996, the Department published a final rule establishing procedures for the electronic filing of passenger rules tariffs.

In this, the third rulemaking proceeding involving the tariff system undertaken as part of the President's directive, the Department has tentatively determined that the filing of certain tariffs with the Department for the foreign air transportation of passengers is no longer necessary or appropriate, and it accordingly proposes to grant another exemption to the tariff-filing requirement set forth in part 221. In addition, the Department has tentatively identified a substantial number of provisions in part 221 that are redundant, contain obsolete references, or are out-dated given present regulatory practices and needs. Accordingly, the Department proposes a general revision of part 221 to eliminate redundancies, excess verbiage and obsolete provisions, to make necessary technical changes, and to reorganize the subparts in a more logical order.

Regulation of Carrier Pricing

The Standard Foreign Fare Level (SFFL)

Section 41509 of the Code establishes a fare flexibility (or ''no suspend'') zone centered on a Standard Foreign Fare Level (SFFL). The SFFL is the fare(s) in effect on or after October 1, 1979 for the city-pair in question, as adjusted for inflation.[1]/ Fare increases of up to five percent above the SFFL, and fare decreases of up to 50 percent below the SFFL, may not be suspended on the grounds that the resulting new fare levels are too low or too high, although suspension is still possible even for fares within the zone on certain other statutory grounds. Approval of fares outside the zone is subject to Department discretion.

Premium and Promotional Fares

Although the law permits the Department to establish a separate SFFL for each fare class or type, and to regulate fare levels outside the zone for each class or type, the Department has generally permitted carriers to set premium fares (first and business class) and discount fares at the levels they wish. Market forces are usually sufficient to ensure that these fares are reasonably priced without government intervention. However, in cases where foreign government policies or actions seriously degrade competitive forces, the Department may be required to look more closely at premium and discount fare pricing in the affected markets.

Normal Economy Fares

As opposed to premium and discount fares, where the Department intervenes only rarely, it maintains regulatory supervision over normal economy fares (NEF's).[2] These fares are the lowest prices available without restrictions. As such, they are the fares used by travelers who must travel and cannot adjust their plans to comply with the various conditions attached to discount fares. The Department believes the public interest favors ensuring access to these fares at reasonable levels, especially so in markets where competitive forces are weak. The Department relies primarily on the SFFL regulatory mechanism to achieve this.[3]

Normal economy fare proposals in direct service markets at or below the cost-based regulatory ceiling are automatically approved. Fare proposals above the ceiling are subject to disapproval. However, we generally approve NEF's above the ceilings in markets governed by double-disapproval bilateral pricing articles.

Carriers are always free to present economic justification to support

[1] The statute established all fares in effect as of October 1, 1979 as the SFFL base fares. Seasonal fares were to maintain the same percent difference between seasons that prevailed in 1978. We discuss the mechanics of the SFFL process in greater detail in footnote 3, below.

[2] By normal economy fares, we are referring to the lowest point-to-point one-way fare available for on-demand service in each market. These are sometimes also called ''restricted'' normal economy fares, or, in markets where these are not available, ''unrestricted'' normal economy fares.

[3] The SFFL mechanism consists of two parts. The first part is comprised of the base fare level which represents the lowest available normal economy fare filed by a direct service carrier in a given city-pair market, and approved for effectiveness on October 1, 1979. For those markets without direct service on October 1, 1979, the fare filed by a carrier instituting direct service becomes the base level. The second part is the cost adjustment factor to be applied to the base fare. This factor is derived from the latest estimated total cost per available seat mile (ASM), divided by the actual total costs per ASM at October 1, 1979, for each Form 41 reporting entity. The statute requires us to adjust the SFFL index every two months for fuel cost changes, and every six months for other cost changes. In practice, we have always made adjustments for both fuel and non-fuel costs every two months. The base fares are than multiplied by the appropriate SFFL index. The product is then increased by the amount of upward flexibility for the market concerned to produce the regulatory ceiling. Discretionary grants of upward flexibility in excess of the statutory five percent have been made for markets where sufficient competition has been found to exist.

proposed fares that exceed SFFL ceilings. Typically, such case-by-case justification follows a more traditional rate-of-return methodology used in public utility regulation. Upon a sufficient showing of a need for additional revenue and a determination that it is in the public interest, we will permit normal economy fares to exceed the regulatory ceilings.

Carrier Pricing—International Liberalization

The U.S. Government has actively pursued the liberalization of international aviation markets, including the right of carriers to set their prices based on managements discretion, free of regulatory intervention. To this end it has concluded air transport agreements containing ''double-disapproval'' pricing articles which effectively deregulate passenger prices in certain markets. Under these double-disapproval provisions, both governments must agree in order to disapprove a fare. Since the first double-disapproval pricing articles were signed in the late 1970's, cases where a Party has sought the agreement of its bilateral partner to disapprove a fare have been extremely rare. In these circumstances, we now question whether any purpose is served in burdening U.S. and foreign carriers with continuing to file passenger fares for approval in markets where pricing has been effectively deregulated by government agreement, and the evolution of competitive market forces.

We have already taken other actions to reduce the industry's costs of complying with the Department's filing requirements. In December of 1989, we permitted carriers to file their official international passenger fare tariffs electronically, relieving the industry and the Department of the burden of producing, filing and processing thousands of tariff pages each year. As indicated above, in November 1995, we exempted carriers from filing international cargo tariffs, and in April 1996, we promulgated a final rule to permit the electronic filing of international passenger service rules, in a further effort to reduce the costs of compliance with tariff filing requirements.

Against this background, we tentatively believe the opportunity now exists to reduce the tariff filing burden on both industry and the government even further by eliminating superfluous and burdensome tariff-filing requirements. Selectively exempting U.S. and foreign air carriers from the statutory and regulatory duty to file international passenger tariffs would appear to be the next logical step in the continuing evolution of a policy where we rely on market forces rather than continual government oversight to set prices for air transportation. In many cases, tariffs continue to be filed in markets where all prices have been effectively deregulated. In others, market forces are usually sufficient to ensure that most fares are reasonably priced without government intervention. Indeed, the continued filing of passenger fares serves a meaningful regulatory purpose only in those markets where foreign government policies or actions seriously hinder competitive forces, or where we continue to supervise normal economy fares.

A. The Scope of the New Tariff-Filing Requirement

Fares and Related Fare Rules

We propose to selectively exempt carriers from their statutory and regulatory duty to file passenger tariffs, both for fares and for related rules that apply to specific fares as follows:

Category A: Third and fourth-freedom carriers would not file any tariffs for travel to and/or from countries where the United States has air transport agreements in force that contain double-disapproval pricing rules, under which agreement of both Parties is required to disapprove an existing or a proposed price, and where the country's government is honoring the provisions of the aviation agreement and there are no significant bilateral problems. At the present time these would include the following 31 countries:

Western Hemisphere: Aruba, Canada, Chile, Costa Rica, El Salvador, Dominican Republic, Guatemala, Jamaica, Trinidad & Tobago.

Europe & Middle East: Austria, Belgium, Czech Republic, Denmark, Finland, Germany, Iceland, Ireland, Israel, Jordan, Luxembourg, Netherlands, Norway, Pakistan, Russia, Sweden, and Switzerland.

Pacific: Fiji, Korea, Malaysia, Singapore, Taiwan.

Category B: All third and fourth-freedom carriers must file tariffs only for regulated normal economy fares applicable to travel to and/or from countries without double-disapproval pricing rules, but where carriers generally have unfettered discretion in pricing initiatives, and where the United States has no outstanding, significant bilateral aviation problems. In this instance, the Department's only regulatory concern is the level of normal economy fares set under existing SFFL legislation. Because carriers frequently make changes in levels, fare codes and other provisions applicable to both ''restricted'' and ''unrestricted'' normal economy fares, we would require continued filing of all one-way economy class fares in these markets. This approach would appear to be the most practical administratively for both the industry and the Department. This category would encompass all countries not specifically listed in Categories A and C.

Category C: All carriers must file tariffs for all fare types applicable to travel to/from various markets where pricing initiatives have been frustrated in recent years and/or where the U.S. has other serious bilateral problems and/or very restrictive agreements. These would include Brazil, China, Ecuador, France (including overseas dependencies), Hong Kong, India, Italy, Japan, Spain, and the United Kingdom (including overseas dependencies), for a total of 10 markets.

Carriers offering fares on a fifth or sixth freedom basis in Category A or Category B markets would not have to file any tariffs in those markets unless they are nationals of restrictive countries identified in Category C. We have tentatively decided to retain existing filing requirements for carriers of restrictive countries in order to prevent free-rider problems. As long as the market for air transportation between the United States and such countries is constrained by government interference with airline pricing initiatives, highly restrictive entry and capacity regimes, or significant, unresolved bilateral problems, it would not be appropriate to permit their carriers to routinely take advantage of the liberal, virtually deregulated pricing regime in Category A markets or the liberal regime that exists for promotional and premium fares in Category B markets. Although we allow all carriers, regardless of nationality, to match fares offered by other carriers in the market (subject to reciprocity), how we treat price leadership proposals by carriers of restrictive countries is entirely a matter of our discretion. For this reason we tentatively conclude that we have a continuing need to supervise all fares of such carriers and would retain existing tariff filing requirements for them.

Under the proposed rule in a new part 293, the Assistant Secretary for Aviation and International Affairs would issue a notice specifying the terms of the exemptions for markets in Category A (no fare filing) and Category B (NEF filing only), and enumerating the countries included in Category A and

Category C; countries not listed in Categories A or C would be assumed to be in Category B. Under the rule, the Assistant Secretary would consider the following factors in listing countries in each category: (1) Whether the U.S. has an aviation agreement in force with that country providing double-disapproval treatment of prices filed by the carriers of the Parties; (2) Whether the country's government has disapproved or deterred U.S. carrier price leadership or matching tariff filings in any market; (3) Whether the country's government has placed significant restrictions on carrier entry or capacity in any market; and (4) Whether the country's government is honoring the provisions of the bilateral aviation agreement and whether there are any significant bilateral problems.[4]

After the initial determination, countries could be transferred between categories by subsequent notice of the Assistant Secretary, by petition, or on the Department's own initiative. For example, entry into force of a double-disapproval bilateral agreement would warrant placing a country into Category A (no fare filing); conversely, action by a foreign government denying U.S. carrier pricing initiatives could justify re-institution of full tariff filing requirements by placing that market in Category C.

General Rules Relating to Conditions of Carriage: In addition to fares and fare-specific rules, existing passenger tariffs also set forth—usually in a separate ''general rules tariff'' —provisions governing the general ''conditions of carriage'' of each passenger. These rules include such general subjects as notice of terms of contract of carriage; carrier liability and limitations thereof; refund and claims procedures; refusal to carry; denied boarding procedures; carriage of passengers with disabilities; and other matters of general significance to consumers of international passenger air transportation.

With the exception of carrier liability limits under the Warsaw Convention, discussed below, we see little need or justification for the continued filing of such material in official tariffs by any carrier, regardless of the nature of the market. First, the Department has regulations in place that directly govern carrier conduct in certain of these areas, such as denied boarding and with respect to U.S. carriers, transportation of passengers with disabilities. Second, to the extent that passengers might have questions about the application or interpretation of certain provisions, it is likely that they would consult the carrier directly, rather than its tariffs. And third, to the extent that tariffs might set forth certain material in greater detail than travel documents, the Department already has an alternate framework in place to permit its incorporation into a contract of carriage with adequate notice to passengers. Under current section 221.177, carriers may incorporate all material not actually printed on the ticket or other travel document by reference, provided that they make the full text of all such incorporated terms readily available for public inspection, in either electronic or printed medium, at each airport or other sales office of the carrier. This procedure preempts any conflicting state laws establishing incorporation-by-reference standards, as did 14 CFR part 253 in the case of interstate passenger air transportation.

In the 14 years since the filing of domestic passenger tariffs was discontinued, incorporation by reference has generally worked well to protect consumers, and we adopted the same regime for international cargo transportation in November 1995. We see no reason not to apply the same approach to all foreign air transportation of passengers. Unlike the prices charged to passengers, which reflect the differing competitive conditions and regulatory regimes that vary among markets and thus justify differing filing requirements, general rules tend to be uniform across markets. We are not aware of particular conditions or issues in any market where continuation of rules tariffs would be superior to a notice regime. The graduated system of written notice and right of immediate inspection for general terms, coupled with direct notice and/or a right to an immediate explanation of certain more important terms, constitutes a deliberate balance between ease of contract formation and the importance of informed assent. Once given actual notice that terms may be incorporated by reference, the customer is under an obligation to inquire about them, and the carrier is under an obligation to make the information available to an inquiring customer.

For these reasons, we tentatively conclude that general rules material setting forth general conditions of carriage should not be filed in official tariffs by any carrier. We propose to cancel this material by operation of law 90 days following the Assistant Secretary's notice setting forth the country categories; the notice will also include an initial description of general conditions of carriage.[5] Each governing rules tariff would be required to contain a statement that rules therein containing general conditions of carriage are not part of the official tariff. This process will provide a transition period for the industry comparable to that we provided in canceling cargo rules tariffs.[6]

We also propose to include provisions in new part 293 which will expressly authorize carriers to incorporate any terms by reference into their contracts for the carriage of passengers in foreign air transportation upon compliance with all of the notice, inspection, explanation and other requirements set forth in 14 CFR 221.107. Completing the basic parallel to 14 CFR parts 253 and 292, we will also expressly provide that passengers are not bound by terms incorporated without compliance with these notice requirements, and that the notice requirements are intended to preempt any conflicting State requirements governing incorporation of contract terms by reference.

However, the Department has specific provisions governing public notice of carrier limitations on passenger and baggage liability, as well as regulations and orders perfecting a required waiver of the passenger liability limits and certain defenses provided by the Warsaw Convention.[7] The latter contain tariff-filing requirements independent of those set forth in part 221. In particular, 14 CFR part 203 requires all direct U.S. and foreign air carriers, except certain ''air taxis,'' to file with the Department a signed counterpart to the Montreal Agreement, and section 203.4 further provides that each carrier include the Agreement's terms as part of its conditions of carriage and that it file and maintain a tariff containing such terms with the Department. Although generally exempt from filing tariffs, most air taxis are also subject to this special requirement. (See 14 CFR 298.11(b) and 298.21(c)(4).)

For several reasons we do not propose to eliminate these special tariff

[4] Our proposed exemption from tariff-filing requirements would not affect our treatment of IATA agreements, which will continue to be reviewed by the Department under existing procedures.

[5] No new filings on applications to file tariffs covered by the exception would be permitted after the date of effectiveness of the notice.

[6] We also propose to delete section 250.4 of 14 CFR Part 250 (Oversales), which requires carriers to file tariffs governing denied-boarding compensation.

[7] Section 221.38(j) of current part 221 requires carriers to state in their tariffs whether they avail themselves of the limitation on liability to passengers as provided in Article 22(1) of the Warsaw Convention or whether they have elected to agree to a higher limit of liability through the tariff, and in either case what the limit is. Sections 221.175 and 221.176 set forth requirements for special notices of passenger and/or baggage liability limitations to be provided at ticket offices and with travel documents.

requirements or to modify the current language on liability notices in part 221. The passenger liability regime established by the Warsaw Convention and subsequent agreements has been under active reexamination by various governments and carrier organizations, and certain carrier agreements to waive Warsaw provisions have been approved pendente lite by the Department, subject to conditions, with exemptions from our regulations and orders sufficient to permit their implementation.[8] Some changes to part 221 as well as other regulations may become necessary, but it is premature to attempt to resolve such issues here. Therefore, subject to the waiver-agreement implementation exemption, the existing tariff-filing requirements, and the special notice provisions of sections 221.175 and 221.176, would remain in effect.[9] By proposing to retain the existing requirements, carriers are not precluded from retaining the passenger liability tariffs as specified in orders of the Department. We recognize, however, that the proposed elimination of other general rules tariffs may necessitate some changes in filing format for any continuing requirement. We are therefore proposing to delegate to the Director, Office of International Aviation, the authority to approve non-substantive format changes for the refiling or new filing of authorized tariff provisions.

Other General Rules and Unpublished Fare Rules: In addition to market-specific fares themselves, prices for international passenger air transportation include a number of provisions filed in current rules tariffs. These include free baggage allowances and excess baggage charges, fare construction rules, surcharges for government-imposed fees or extraordinary costs authorized by the Department, and various ''unpublished'' fares specified as a percentage of published fares,[10] or fares applicable in more than one market, such as spouse, air/sea, special event and countrywide excursion fares. Similarly, there are a number of ''general fare rules'' which, while they are not prices themselves, are essential to our understanding of the applicability of particular published prices as well as to our evaluation of the differences among published prices. These include definitions of important terms such as ''stopover,'' as well as currency provisions, classes of service, and capacity limitations. We tentatively believe that a regulatory need exists for the continued filing of such ''price-defining'' terms and provisions.

We will continue to scrutinize such prices through the tariff system to the same extent, and for the same reasons, as we review the market-specific fares themselves. This means that we will continue to require such unpublished fare rules and general fare rules to be filed in Category C markets, and in Category B markets to the extent that they have applicability to the benchmark normal economy fares filed in the latter markets. At the same time, we recognize that these rules are not market-specific. We believe that it would be an unnecessary burden on carriers to require each such rule to carry a notation specifying the markets and fares to which it applies. Instead, we propose to allow such rules to continue to be included in rules tariffs subject to a clear general disclaimer, published as part of each separate rules tariff, that the rules contained therein apply only to the market-specific fares that the Department requires to be filed as tariffs, or, in the case of baggage and other ancillary charges, to the services covered by such fares.[11]

B. The General Revision of Part 221

The Department has tentatively determined that many provisions in part 221 are obsolete in terms of current regulatory practices and needs, that an additional exemption to certain tariff-filing requirements is warranted to reduce unnecessary burdens on government and industry, and that technical and editorial changes to many other provisions in part 221 are necessary to make them current.

The last general revision of part 221 was in 1965, over thirty years ago, and the last editorial review was in 1985 to reflect both the statutory elimination of domestic tariffs and the transfer of the economic functions of the former Civil Aeronautics Board to the Department.

Since that time, the Department has exempted carriers from cargo tariff-filing requirements, and both the Department and the industry have made significant progress toward the goal of replacing the traditional system of filing, reviewing, and publishing paper tariffs with a far more efficient electronic system. We are also proposing a further exemption to tariff-filing requirements here, including, for all carriers, the extensive category of tariffs relating to the ''conditions of carriage.''

While the industry has not completed its development of an acceptable format for the electronic filing of certain general fare rules and unpublished fare rules discussed in the previous section, we tentatively find that the volume of residual paper filings for those rules does not warrant retention of the detailed requirements of part 221, which was designed for a fully-regulated and exclusively paper tariff system to meet the needs of a previous era.

General. The proposed revisions to part 221 are extensive, involving at least a 50 percent reduction in the number of existing provisions. In addition, a number of provisions are being consolidated and rewritten, and the various subparts are being reorganized for clarity. Because of the extent and number of changes being made, we propose to reissue part 221 in its entirety.

Major Changes

1. To reflect the exemption from the requirement to file cargo tariffs, current subpart F is deleted in its entirety, as well as all other references to cargo rates and rules throughout part 221. Should the Department find it necessary to reimpose a cargo tariff filing requirement in specific circumstances, pursuant to the procedures specified in 14 CFR part 292, the necessary filing procedures and formats will be specified in the Department's order.

2. To the extent that passenger fares, charges and other prices remain subject to the tariff-filing requirement, the proposed rule would dictate that all such filings be made electronically. See proposed section 221.30. Currently, only a few of the smaller carriers still file prices in a paper format. Should a carrier or tariff agent be able to demonstrate exceptional circumstances which require that it continue to file in a paper format, the Department will consider applications for a temporary waiver of the electronic filing requirement on a case-by-case basis. Any necessary procedural and format

[8] See Orders 96–10–7 and 96–11–6 in Dockets OST–95–232 and OST–96–1607.

[9] There being no specific requirement that carriers file baggage liability tariffs, such tariffs would no longer be filed, or remain on file, under the general tariff rules exemption proposed here. Carriers' tariffs merely restate the baggage liability provisions of the Warsaw Convention and their printed conditions of carriage, which apply to the extent they are consistent with the Department's review of IATA agreements, and other relevant orders. As in other areas, the absence of tariffs does not relieve carriers of their obligations to conform their contracts of carriage and related practices to the Department's regulations and orders. Should exceptional circumstances arise in which tariff rules on the subject would be appropriate, the Department retains the authority to require them on an ad hoc basis.

[10] For example, child, youth and senior citizen discounts.

[11] We propose to delegate to the Director, Office of International Aviation, the authority to determine which rules are covered by the general exemption from tariff filing of conditions of carriage, and which rules continue to be subject to tariff filing in Category B and C markets.

requirements for authorized paper filings will be established as part of the Department's authorization.

3. Filing procedures and requirements specifically relating to contract of carriage provisions will be deleted, reflecting our proposal to exempt carriers from the filing of such tariffs for the foreign air transportation of passengers. As in the case of cargo, should the Department reimpose a filing requirement with regard to any passenger contract of carriage provisions pursuant to the procedures set forth in the proposed new part 293, any necessary filing procedures and formats would be specified in the Department's order.

4. To the extent that passenger fare rules (as opposed to passenger prices that are required to be filed electronically) remain subject to the tariff-filing requirement, section 221.31 provides that such rules may be filed electronically, if approved electronic formats exist; or alternatively, that they may be filed in a paper format, subject to the simplified requirements set forth in other provisions of the proposed rule.

5. Most of the detailed format and justification specifications originally designed for paper tariffs and related filings, such as those set forth in current Subpart U and to varying degrees in current subparts C, D, H, L, M, R, S, and T, have been eliminated. Many such specifications are obsolete because they pertain to tariff material no longer required to be filed, while many others go into much more detail than is necessary for current or proposed tariff filing needs.[12] The Department does not intend that the elimination of current format specifications will render material filed in such formats unacceptable to the extent such material must still be filed. If carriers find it economically advantageous to continue using the same formats, they may do so. Or, they may propose other formats that meet the basic requirements set forth in the simplified provisions of the proposed rule.

6. The proposed rule retains the language of current sections 221.38(h) and (j), 221.175 and 221.176. These sections set forth requirements for filing tariffs and posting special notices of passenger and/or baggage liability limitations under the Warsaw Convention and other U.S. law. As noted above, changes are in the process of being made to the current passenger liability regime. Moreover, the Department has, by order, granted carriers appropriate exemptions to implement waivers of the Warsaw passenger liability limits to the extent that the current provisions of part 221 and other regulations might be construed to be inconsistent with the approved changes.

Conclusion

This rule will not materially lessen the Department's ability to intervene in passenger pricing matters should it be necessary.[13] First, the review of IATA passenger fare agreements will continue. Second, the Department has always had the statutory authority to take action directly against unfiled passenger fares and rules under a variety of circumstances.[14] And third, the Department will reserve the option under the proposed rule of revoking the exemption, and thus of reinstating the tariff-filing obligation, with regard to a particular carrier or carriers, or for specific markets, where consistent with the public interest. This would make available to the Department, upon short notice, the full panoply of tariff-filing requirements and review procedures, although the Department would not necessarily implement them all in any particular case.

Regulatory Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

The Department has determined that this proposed rule is not a significant regulatory action under Executive Order 12866. However, the proposed rule is significant under the Department's Regulatory Policies and Procedures (44 CFR 11034; Feb. 26, 1979), because it will reduce the paperwork and filing burden for all U.S. and foreign air carriers submitting international passenger tariffs to the Department. The Department anticipates that the proposal could save international scheduled service passenger airlines as much as $3.23 million in tariff-filing and preparation expenses, based on figures submitted to OMB under the Paperwork Reduction Act for reinstatement of the part 221 information collection. The Department does not expect there to be any additional costs associated with this rule.

Executive Order 12612

This proposal has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 (''Federalism''), and the Department has determined the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

I certify that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities, because the tariff filing requirements apply to scheduled service air carriers. The vast majority of the air carriers filing international (''foreign'') air passenger tariffs are large operators with revenues in excess of several million dollars each year. Small air carriers operating aircraft with 60 seats or less and 18,000 pounds payload or less that offer on-demand air-taxi service are not required to file such tariffs.

Paperwork Reduction Act

With respect to the Paperwork Reduction Act, the proposed reissue of part 221 would eliminate any residual paper tariff format and filing procedures and replace them with more efficient electronic filing procedures. In addition, the proposed new part 293 would exempt carriers from their statutory and regulatory duty to file international passenger tariffs in certain specific markets, subject to reimposition of this duty when required by the public interest. Thus, this rule will significantly reduce the paperwork and filing burden on government and industry, even though it does not totally eliminate information collection requirements that require the approval of the Office of Management and Budget pursuant to the Act. While not estimated, we expect that costs of governmental review, filing and archiving of paper tariff rule filings will be similarly reduced.

The reporting and recordkeeping requirement associated with this rule are being submitted to OMB for approval in accordance with The Paperwork Reduction Act of 1995 (Pub. L. 104–113) under OMB No. 2105, formerly 2105–0009; Administration: Department of Transportation; *Title:* Exemption from Passenger Tariff-Filing Requirements in Certain Instances, and Mandatory Electronic Filing of Residual

[12] For example, we have eliminated the prescribed forms for items such as tariff transmittal letters, special tariff permission applications, concurrences, and powers of attorney, as well as the detailed specifications for economic data and information supporting tariff changes. In the latter case, although all tariff changes must still be explained and supported by adequate information and/or data, we have aligned the requirements of part 221 with actual industry practice, and eliminated the disparate justification requirements for U.S. and foreign carrier filings.

[13] As in other instances where we have exempted carriers from routine tariff filing requirements, we will rely primarily upon competitors and users to bring any problems to our attention.

[14] See, for example, 49 U.S.C. sections 41712, 41507 and 41310.

Passenger Tariffs; *Need For Information:* Exempts carriers from their statutory and regulatory duty to file international passenger tariffs in certain specific markets, subject to reimposition of this duty when required by the public interest; and eliminates residual paper tariff format and filing procedures, replacing them with more efficient electronic filing procedures; *Proposed Use of Information:* Exemption is based on evolution in regulatory circumstances, while elimination of residual paper tariff filing procedures is based on the need to extend the efficiencies of electronic data transmission and processing to the filing of all passenger tariffs; *Frequency:* An initial passenger tariff rule filing is required of each respondent; changes are voluntary, whenever an air carrier elects; *Estimated Total Annual Burden Under Proposal:* 650,000 hours; *Respondents:* 230; *Form(s)* 13,340 electronic filings or applications per annum; *Average Burden Hours Per Respondent:* 2,826 hours.

For further information on paperwork reduction contact: The Information Requirements Division, M–34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–4735 or DOT Desk Officer, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503.

Regulation Identifier Number

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects

14 CFR Part 221

Air fare, Agents, Reporting and recordkeeping requirements.

14 CFR Part 250

Oversales, Denied boarding.

14 CFR Part 293

Air transportation, Exemptions, Tariffs.

The proposed rule is being issued under the authority contained in 49 CFR 1.56(j)(2)(ii). For the reasons set forth herein, 14 CFR Chapter II would be amended as follows:

1. Part 221 is revised.

PART 221—TARIFFS

Subpart A—General

Subpart B—Who is Authorized to Issue and File Tariffs

Subpart C—Specifications of Tariff Publications

Subpart D—Manner of Filing Tariffs

Subpart E—Contents of Tariff

Subpart F—Requirements Applicable to all Statements of Fares and Charges

Subpart G—Governing Tariffs

Subpart H—Amendment of Tariffs

Subpart I—Suspension of Tariff Provisions by Department

Subpart J—Filing Tariff Publications with Department

Subpart K—Availability of Tariff Publications for Public Inspection

Subpart L—Rejection of Tariff Publications

Subpart M—Special Tariff Permission to File on Less Than Statutory Notice

Subpart N—Waiver of Tariff Regulations

Subpart O—Giving and Revoking Concurrences to Carriers

Subpart P—Giving and Revoking Powers of Attorney to Agents

Subpart Q—Adoption Publications Required to Show Change in Carrier's Name or Transfer of Operating Control

Authority: 49 U.S.C. 40101, 40109, 40113, 46101, 46102, Chapter 411, Chapter 413, Chapter 415 and Subchapter I of Chapter 417, unless otherwise noted.

Subpart A—General

§ 221.1 Applicability of this part.

All tariffs and amendments to tariffs of air carriers and foreign air carriers filed with the Department pursuant to chapter 415 of the statute shall be constructed, published, filed, posted and kept open for public inspection in accordance with the regulations in this part and orders of the Department.

§ 221.2 Carrier's duty.

(a) *Must file tariffs.* Except as provided in paragraph (d) of this section, every air carrier and every foreign air carrier shall file with the Department, and provide and keep open to public inspection, tariffs showing all fares, and charges for foreign air transportation between points served by it, and between points served by it and points served by any other air carrier or foreign air carrier, when through service and through rates shall have been established, and showing to the extent required by regulations and orders of the Department, all classifications, rules, regulations, practices, and services in connection with such foreign air transportation. Tariffs shall be filed, and provided in such form and manner, and shall contain such information as the Department shall by regulation or order prescribe. Any tariff so filed which is not consistent with chapter 415 of the statute and such regulations and orders may be rejected. Any tariff so rejected shall be void, and may not be used.

(b) *Must observe tariffs.* No air carrier or foreign air carrier shall charge or demand or collect or receive a greater or less or different compensation for foreign air transportation or for any service in connection therewith, than the fares and charges specified in its currently effective tariffs; and no air carrier or foreign air carrier shall, in any manner or by any device, directly or indirectly, or through any agent or broker, or otherwise, refund or remit any portion of the fares, or charges so specified, or extend to any person any privileges or facilities, with respect to matters required by the Department to be specified in such tariffs, except those specified in such tariffs.

(c) *No relief from violations.* Nothing contained in this part shall be construed as relieving any air carrier or foreign air carrier from liability for violations of the statute, nor shall the filing of a tariff, or amendment thereto, relieve any air carrier or foreign air carrier from such violations or from violations of regulations issued under the statute.

(d) *Exemption authority.* Air carriers and foreign air carriers, both direct and indirect, are exempted from the requirement of section 41504 of the statute and any requirement of this chapter to file, and shall not file with the Department, tariffs for operations under the following provisions:

(1) Part 291, Domestic Cargo Transportation;

(2) Part 296, Indirect Air Transportation of Property;

(3) Part 297, Foreign Air Freight Forwarders and Foreign Cooperative Shippers Association;

(4) Part 298, Exemption for Air Taxi Operations, except to the extent noted in § 298.11(b);

(5) Part 380, Public Charters;

(6) Part 207, Charter Trips and Special Services;

(7) Part 208, Terms, Conditions, and Limitations of Certificates to Engage in Charter Air Transportation;

(8) Part 212, Charter Trips by Foreign Air Carriers;

(9) Part 292, International Cargo Transportation, except as provided in part 292.

(10) Part 293 International Passenger Transportation, except as provided in part 293.

§ 221.3 Definitions.

As used in this part, terms shall be defined as follows:

Add-on means an amount published for use only in combination with other fares for the construction of through fares. It is also referred to as ''proportional fare'' and ''arbitrary fare''.

Add-on tariff means a tariff which contains add-on fares.

Area No. 1 means all of the North and South American Continents and the islands adjacent thereto; Greenland; Bermuda; the West Indies and the islands of the Caribbean Sea; and the Hawaiian Islands (including Midway and Palmyra).

Area No. 2 means all of Europe (including that part of the former Union of the Soviet Socialist Republics in Europe) and the islands adjacent thereto; Iceland; the Azores; all of Africa and the islands adjacent thereto; Ascension Island; and that part of Asia lying west of and including Iran.

Area No. 3 means all of Asia and the islands adjacent thereto except that portion included in Area No. 2; all of the East Indies, Australia, New Zealand, and the islands adjacent thereto; and the islands of the Pacific Ocean except those included in Area No. 1.

Bundled Normal Economy Fare means the lowest one-way fare available for unrestricted, on-demand service in any city-pair market.

Capacity controlled fare means a fare for which a carrier limits the number of seats available for sale.

Carrier means an air carrier or foreign air carrier subject to section 41504 of the Statute.

Charge means the amount charged for baggage, in excess of the free allowance, accompanying or checked by a passenger or for any other service ancillary to the passenger's carriage.

Conditions of carriage means those rules of general applicability that define the rights and obligations of the carrier(s) and any other party to the contract of carriage with respect to the transportation services provided.

Contract of carriage means those fares, rules, and other provisions applicable to the foreign air transportation of passengers or their baggage, as defined in the statute.

CRT means a video display terminal that uses a cathode ray tube as the image medium.

Department means the Department of Transportation.

Direct-service market means an international market where the carrier

provides service either on a nonstop or single-flight-number basis, including change-of-gauge.

Electronic tariff means an international passenger fares or rules tariff or a special tariff permission application transmitted to the Department by means of an electronic medium, and containing fares for the transportation of persons and their baggage, and including such associated data as arbitraries, footnotes, routings, and fare class explanations.

Fare means the amount per passenger or group of persons stated in the applicable tariff for the air transportation thereof and includes baggage unless the context otherwise requires.

Field means a specific area of a record used for a particular category of data.

Filer means an air carrier, foreign air carrier, or tariff publishing agent of such a carrier filing tariffs on its behalf in conformity with this subpart.

Item means a small subdivision of a tariff and identified by a number, a letter, or other definite method for the purpose of facilitating reference and amendment.

Joint fare means a fare that applies to transportation over the joint lines or routes of two or more carriers and which is made and published by arrangement or agreement between such carriers evidenced by concurrence or power of attorney.

Joint tariff means a tariff that contains joint fares.

Local fare means a fare that applies to transportation over the lines or routes of one carrier only.

Local tariff means a tariff that contains local fares.

Machine-Readable Data means encoded computer data, normally in a binary format, which can be read electronically by another computer with the requisite software without any human interpretation.

On-line Tariff Database means the remotely accessible, on-line version, maintained by the filer, of (1) the electronically filed tariff data submitted to the Department pursuant to this part and Department orders, and (2) the Departmental approvals, disapprovals, and other actions, as well as any Departmental notation concerning such approvals, disapprovals, or other actions, that subpart R of this part requires the filer to maintain in its database.

Original tariff refers to the tariff as it was originally filed exclusive of any supplements, revised records or additional records.

Passenger means any person who purchases, or who contacts a ticket office or travel agent for the purpose of purchasing, or considering the purchase of, foreign air transportation.

Passenger tariff means a tariff containing fares, charges, or governing provisions applicable to the foreign air transportation of persons and their baggage.

Publish means to display tariff material in either electronic or paper media.

Record means an electronic tariff data set that contains information describing one (1) tariff price or charge, or information describing one (1) related element associated with that tariff price or charge.

SFFL means the Standard Foreign Fare Level as established by the Department of Transportation under 49 U.S.C. 41509.

Statute means Subtitle VII of Title 49, United States Code.

Statutory Notice means the number of days required for tariff filings in § 221.160(a).

Tariff publication means a tariff, a supplement to a tariff, or an original or revised record of a tariff, including an index of tariffs and an adoption notice (§ 221.161).

Through fare means the total fare from point of origin to destination. It may be a local fare, a joint fare, or combination of separately established fares.

Ticket Office means a station, office or other location where tickets are sold or similar documents are issued, that is under the charge of a person employed exclusively by the carrier, or by it jointly with another person.

Unbundled Normal Economy Fare means the lowest one-way fare available for on-demand service in any city-pair market which is restricted in some way, *e.g.,* by limits set and/or charges imposed for enroute stopovers or transfers, exclusive of capacity control.

United States means the several States, the District of Columbia, and the several Territories and possessions of the United States, including the Territorial waters and the overlying air space thereof.

Warsaw Convention means the Convention for the Unification of Certain Rules Relating to International Transportation by Air, 49 Stat. 3000.

§ 221.4 English language.

All tariffs and other documents and material filed with the Department pursuant to this part shall be in the English language.

§ 221.5 Unauthorized air transportation.

Tariff publications shall not contain fares or charges, or their governing provisions, applicable to foreign air transportation which the issuing or participating carriers are not authorized by the Department to perform, except where the Department expressly requests or authorizes tariff publications to be filed prior to the Department's granting authority to perform the foreign air transportation covered by such tariff publications. Any tariff publication filed pursuant to such express request or authorization which is not consistent with chapter 415 and this part may be rejected; any tariff publication so rejected shall be void.

Subpart B—Who is Authorized to Issue and File Tariffs

§ 221.10 Carrier.

(a) *Local or joint tariffs.* A carrier may issue and file, in its own name, tariff publications which contain:

(1) Local fares of such carrier only, and provisions governing such local fares, and/or

(2) Joint fares which apply jointly via such issuing carrier in connection with other carriers (participating in the tariff publications under authority of their concurrences given to the issuing carrier as provided in ' 221.140) and provisions governing such joint fares. Provisions for account of an individual participating carrier may be published to govern such joint fares provided ' 221.40(a)(9) is complied with. A carrier shall not issue and file tariff publications containing local fares of other carriers, joint rates or fares in which the issuing carrier does not participate, or provisions governing such local or joint fares.

(3) Rules and regulations governing foreign air transportation to the extent provided by this part and/or Department order. Rules and regulations may be published in separate governing tariffs, as provided in subpart G.

(b) *Issuing officer.* An officer or designated employee of the issuing carrier shall be shown as the issuing officer of a tariff publication issued by a carrier, and such issuing officer shall file the tariff publication with the Department on behalf of the issuing carrier and all carriers participating in the tariff publication.

§ 221.11 Agent.

An agent may issue and file, in his or its own name, tariff publications naming local fares and/or joint fares, and provisions governing such fares, and rules and regulations governing foreign air transportation to the extent provided by this part and/or Department order, for account of carriers participating in such tariff publications, under authority

of their powers of attorney given to such issuing agent as provided in ' 221.150. The issuing agent shall file such tariff publications with the Department on behalf of all carriers participating therein. Only one issuing agent may act in issuing and filing each such tariff publication.

Subpart C—Specifications of Tariff Publications

§ 221.20 Specifications applicable to tariff publications.

(a) *Numerical order.* All items in a tariff shall be arranged in numerical or alphabetical order. Each item shall bear a separate item designation and the same designation shall not be assigned to more than one item.

(b) *Carrier's name.* Wherever the name of a carrier appears in a tariff publication, such name shall be shown in full exactly as it appears in the carrier's certificate of public convenience and necessity, foreign air carrier permit, letter of registration, or whatever other form of operating authority of the Department to engage in air transportation is held by the carrier, or such other name which has specifically been authorized by order of the Department. A carrier's name may be abbreviated, provided the abbreviation is explained in the tariff.

(c) *Agent's name and title.* Wherever the name of an agent appears in tariff publications, such name shall be shown in full exactly as it appears in the powers of attorney given to such agent by the participating carriers and the title ''Agent'' or ''Alternate Agent'' (as the case may be) shall be shown immediately in connection with the name.

(d) *Statement of prices.* All fares and charges shall be clearly and explicitly stated and shall be arranged in a simple and systematic manner. Complicated plans and ambiguous or indefinite terms shall not be used. So far as practicable, the fares and charges shall be subdivided into items or similar units, and an identifying number shall be assigned to each item or unit to facilitate reference thereto.

(e) *Statement of rules.* The rules and regulations of each tariff shall be clear, explicit and definite, and except as otherwise provided in this part, shall contain:

(1) Such explanatory statements regarding the fares, charges, rules or other provisions contained in the tariff as may be necessary to remove all doubt as to their application.

(2) All of the terms, conditions, or other provisions which affect the fares or charges for air transportation named in the tariff.

(3) All provisions and charges which in any way increase or decrease the amount to be paid by any passenger, or which in any way increase or decrease the value of the services rendered to the passenger.

(f) *Separate rules tariff.* If desired, rules and regulations may be published in separate governing tariffs to the extent authorized and in the manner required by subpart G.

(g) *Rules of limited application.* A rule affecting only a particular fare or other provision in the tariff shall be specifically referred to in connection with such fare or other provision, and such rule shall indicate that it is applicable only in connection with such fare or other provision. Such rule shall not be published in a separate governing rules tariff.

(h) *Conflicting or duplicating rules prohibited.* The publication of rules or regulations which duplicate or conflict with other rules or regulations published in the same or any other tariff for account of the same carrier or carriers and applicable to or in connection with the same transportation is prohibited.

(i) Each tariff shall include:

(1) A prominent D.O.T. or other number identifying the tariff in the sequence of tariffs published by the carrier or issuing agent;

(2) The name of the issuing carrier or agent;

(3) The cancellation of any tariffs superseded by the tariff;

(4) A description of the tariff contents, including geographic coverage;

(5) Identification by number of any governing tariffs;

(6) The date on which the tariff is issued;

(7) The date on which the tariff provisions will become effective; and

(8) the expiration date, if applicable to the entire tariff.

Subpart D—Manner of Filing Tariffs

§ 221.30 Passenger fares and charges.

(a) Fares tariffs, including associated data, shall be filed electronically in conformity with subpart R. Associated data includes arbitraries, footnotes, routing numbers and fare class explanations. See § 221.202(b)(8).

(b) Upon application by a carrier, the Department's Office of International Aviation shall have the authority to waive the electronic filing requirement in this paragraph and in subpart R in whole or in part, for a period up to one year, and to permit, under such terms and conditions as may be necessary to carry out the purposes of this part, the applicant carrier to file fare tariffs in a paper format. Such waivers shall only be considered where electronic filing, compared to paper filing, is impractical and will produce a significant economic hardship for the carrier due to the limited nature of the carrier's operations subject to the requirements of this part, or other unusual circumstances. Paper filings pursuant to this paragraph shall normally conform to the requirements of § 221.195 and other applicable requirements of this part.

§ 221.31 Rules and regulations governing passenger fares and services.

(a) Tariff rules and regulations governing passenger fares and services other than those subject to § 221.30 may be filed electronically in conformity with subpart R. Such filings shall conform to criteria approved by the Department's Office of International Aviation as provided in § 221.180 and shall contain at a minimum the information required by § 221.202(b)(9).

(b) Applications for special tariff permission may be filed electronically, as provided in § 221.212.

(c) Tariff publications and applications for special tariff permission covered by paragraphs (a) and (b) of this section may be filed in a paper format, subject to the requirements of this part and Department orders.

Subpart E—Contents of Tariff

§ 221.40 Specific requirements.

(a) In addition to the general requirements in § 221.20, the rules and regulations of each tariff shall contain:

(1) *Aircraft and seating.* For individually ticketed passenger service, the name of each type of aircraft used in rendering such service by manufacturer model designation and a description of the seating configuration (or configurations if there are variations) of each type of aircraft. Where fares are provided for different classes or types of passenger service (that is, first class, coach, day coach, night coach, tourist, economy or whatever other class or type of service is provided under the tariff), the tariff shall specify the type of aircraft and the seating configuration used on such aircraft for each class or type of passenger service. When two or more classes or types of passenger service are performed in a single aircraft, the seating configuration for each type or class shall be stated and described.

(2) *Rule numbers.* Each rule or regulation shall have a separate designation. The same designation shall not be assigned to more than one rule in the tariff.

(3) *Penalties.* Where a rule provides a charge in the nature of a penalty, the rule shall state the exact conditions under which such charge will be imposed.

(4) *Vague or indefinite provisions.* Rules and regulations shall not contain indefinite statements to the effect that traffic of any nature will be ''taken only by special arrangements'', or that services will be performed or penalties imposed ''at carrier's option'', or that the carrier ''reserves the right'' to act or to refrain from acting in a specified manner, or other provisions of like import; instead, the rules shall state definitely what the carrier will or will not do under the exact conditions stated in the rules.

(5) *Personal liability rules.* Except as provided in this part, no provision of the Department's regulations issued under this part or elsewhere shall be construed to require the filing of any tariff rules stating any limitation on, or condition relating to, the carrier's liability for personal injury or death. No subsequent regulation issued by the Department shall be construed to supersede or modify this rule of construction except to the extent that such regulation shall do so in express terms.

(6) *Notice of limitation of liability for death or injury under the Warsaw Convention.* Notwithstanding the provisions of paragraph (a)(5) of this section, each air carrier and foreign air carrier shall publish in its tariffs a provision stating whether it avails itself of the limitation on liability to passengers as provided in Article 22(1) of the Warsaw Convention or whether it has elected to agree to a higher limit of liability by a tariff provision. Unless the carrier elects to assume unlimited liability, its tariffs shall contain a statement as to the applicability and effect of the Warsaw Convention, including the amount of the liability limit in dollars. Where applicable, a statement advising passengers of the amount of any higher limit of liability assumed by the carrier shall be added.

(7) *Extension of credit.* Air carriers and foreign air carriers shall not file tariffs that set forth charges, rules, regulations, or practices relating to the extension of credit for payment of charges applicable to air transportation.

(8) *Individual carrier provisions governing joint fares.* Provisions governing joint fares may be published for account of an individual carrier participating in such joint fares provided that the tariff clearly indicates how such individual carrier's provisions apply to the through transportation over the applicable joint routes comprised of such carrier and other carriers who either do not maintain such provisions or who maintain different provisions on the same subject matter.

(9) *Passenger property which cannot lawfully be carried in the aircraft cabin.* Each air carrier shall set forth in its tariffs governing the transportation of persons, including passengers' baggage, charges, rules, and regulations providing that such air carrier receiving as baggage any property of a person traveling in air transportation, which property cannot lawfully be carried by such person in the aircraft cabin by reason of any Federal law or regulation, shall assume liability to such person, at a reasonable charge and subject to reasonable terms and conditions, within the amount declared to the air carrier by such person, for the full actual loss or damage to such property caused by such air carrier.

(b) [Reserved]

§ 221.41 Routing.

(a) *Required routing.* The route or routes over which each fare applies shall be stated in the tariff in such manner that the following information can be definitely ascertained from the tariff:

(1) The carrier or carriers performing the transportation,

(2) The point or points of interchange between carriers if the route is a joint route (via two or more carriers),

(3) The intermediate points served on the carrier's or carriers' routes applicable between the origin and destination of the fare and the order in which such intermediate points are served.

(b) *Individually stated routings—Method of publication.* The routing required by paragraph (a) of this section shall be shown directly in connection with each fare or charge for transportation, or in a routing portion of the tariff (following the fare portion of the tariff), or in a governing routing tariff. When shown in the routing portion of the tariff or in a governing routing tariff, the fare from each point of origin to each point of destination shall bear a routing number and the corresponding routing numbers with their respective explanations of the applicable routings shall be arranged in numerical order in the routing portion of the tariff or in the governing routing tariff.

Subpart F—Requirements Applicable to All Statements of Fares and Charges

§ 221.50 Currency.

(a) *Statement in United States currency required.* All fares and charges shall be stated in cents or dollars of the United States except as provided in paragraph (b) of this section.

(b) *Statements in both United States and foreign currencies permitted.* Fares and charges applying between points in the United States, on the one hand, and points in foreign countries, on the other hand, or applying between points in foreign countries, may also be stated in the currencies of foreign countries in addition to being stated in United States currency as required by paragraph (a) of this section: Provided, that:

(1) The fares and charges stated in currencies of countries other than the United States are substantially equivalent in value to the respective fares and charges stated in cents or dollars of the United States.

(2) Each record containing fares and charges shall clearly indicate the respective currencies in which the fares and charges thereon are stated, and

(3) The fares and charges stated in cents or dollars of the United States are published separately from those stated in currencies of other countries. This shall be done in a systematic manner and the fares and charges in the respective currencies shall be published in separate records.

§ 221.51 Territorial application.

(a) *Specific points of origin and destination.* Except as otherwise provided in this part, the specific points of origin and destination from and to which the fares apply shall be specifically named directly in connection with the respective fares.

(b) *Directional application.* A tariff shall specifically indicate directly in connection with the fares therein whether they apply ''from'' and ''to'' or ''between'' the points named. Where the fares apply in one direction, the terms ''From'' and ''To'' shall be shown in connection with the point of origin and point of destination, respectively, and, where the fares apply in both directions between the points, the terms ''Between'' and ''And'' shall be shown in connection with the respective points.

§ 221.52 Airport to airport application, accessorial services.

Tariffs shall specify whether or not the fares therein include services in addition to airport-to-airport transportation.

§ 221.53 Proportional fares.

(a) *Definite application.* Add-on fares shall be specifically designated as ''add-on'' fares on each page where they appear.

(b) A tariff may provide that fares from (or to) particular points shall be

determined by the addition of add-ons to, or the deduction of add-ons from, fares therein which apply from (or to) a base point. Provisions for the addition or deduction of such add-ons shall be shown either directly in connection with the fare applying to or from the base point or in a separate provision which shall specifically name the base point. The tariff shall clearly and definitely state the manner in which such add-ons shall be applied.

(c) *Restrictions upon beyond points or connecting carriers.* If an add-on fare is intended for use only on traffic originating at and/or destined to particular beyond points or is to apply only in connection with particular connecting carriers, such application shall be clearly and explicitly stated directly in connection with such add-on fare.

§ 221.54 Fares stated in percentages of other fares; other relationships prohibited.

(a) Fares for foreign air transportation of persons or property shall not be stated in the form of percentages, multiples, fractions, or other relationships to other fares except to the extent authorized in paragraphs (b), (c), and (d) of this section with respect to passenger fares and baggage charges.

(b) A basis of fares for refund purposes may be stated, by rule, in the form of percentages of other fares.

(c) Transportation rates for the portion of passengers' baggage in excess of the baggage allowance under the applicable fares may be stated, by rule, as percentages of fares.

(d) Children's, infants' and senior citizen's fares, may be stated, by rule, as percentages of other fares published specifically in dollars and cents (hereinafter referred to as base fares): Provided, that:

(1) Fares stated as percentages of base fares shall apply from and to the same points, via the same routes, and for the same class of service and same type of aircraft to which the applicable base fares apply, and shall apply to all such base fares in a fares tariff.

(2) Fares shall not be stated as percentages of base fares for the purpose of establishing fares applying from and to points, or via routes, or on types of aircraft, or for classes of service different from the points, routes, types of aircraft, or classes of service to which the base fares are applicable.

§ 221.55 Conflicting or duplicating fares prohibited.

The publication of fares or charges of a carrier which duplicate or conflict with the fares of the same carrier published in the same or any other tariff for application over the same route or routes is hereby prohibited.

§ 221.56 Applicable fare when no through local or joint fares.

Lowest combination fare applicable. Where no applicable local or joint fare is provided from point of origin to point of destination over the route of movement, whichever combination of applicable fares provided over the route of movement produces the lowest charge shall be applicable, except that a carrier may provide explicitly that a fare cannot be used in any combination or in a combination on particular traffic or under specified conditions, provided another combination is available.

Subpart G—Governing Tariffs

§ 221.60 When reference to governing tariffs permitted.

(a) *Reference to other tariffs prohibited except as authorized.* A tariff shall not refer to nor provide that it is governed by any other tariff, document, or publication, or any part thereof, except as specifically authorized by this part.

(b) *Reference by fare tariff to governing tariffs.* A fare tariff may be made subject to a governing tariff or governing tariffs authorized by this subpart: Provided, that reference to such governing tariffs is published in the fare tariff in the manner required by § 221.20(h).

(c) *Participation in governing tariffs.* A fare tariff may refer to a separate governing tariff authorized by this subpart only when all carriers participating in such fare tariff are also shown as participating carriers in the governing tariff: Provided, that:

(1) If such reference to a separate governing tariff does not apply for account of all participating carriers and is restricted to apply only in connection with local or joint fares applying over routes consisting of only particular carriers, only the carriers for whom such reference is published are required to be shown as participating carriers in the governing tariff to which such qualified reference is made.

(2) [Reserved].

(d) *Maximum number of governing tariffs.* A single fare tariff shall not make reference to conflicting governing tariffs.

§ 221.61 Rules and regulations governing foreign air transportation.

Instead of being included in the fares tariffs, the rules and regulations governing foreign air transportation required to be filed by §§ 221.20 and 221.30 and/or Department order which do not govern the applicability of particular fares may be filed in separate governing tariffs, conforming to this subpart. Governing rules tariffs shall contain an index of rules.

§ 221.62 Explosives and other dangerous or restricted articles.

Carriers may publish rules and regulations governing the transportation of explosives and other dangerous or restricted articles in separate governing tariffs, conforming to this subpart, instead of being included in the fares tariffs or in the governing rules tariff authorized by § 221.61. This separate governing tariff shall contain no other rules or governing provisions.

§ 221.63 Other types of governing tariffs.

Subject to approval of the Department, carriers may publish other types of governing tariffs not specified in this subpart, such as routing guides.

Subpart H—Amendment of Tariffs

§ 221.70 Who may amend tariffs.

A tariff shall be amended only by the carrier or agent who issued the tariff (except as otherwise authorized in subparts P and Q).

§ 221.71 Requirement of clarity and specificity.

Amendments to tariffs shall identify with specificity and clarity the material being amended and the changes being made. Amendments to paper tariffs shall be accomplished by reissuing each page upon which a change occurs with the change made and identified by uniform amendment symbols. Each revised page shall identify and cancel the previously effective page, show the effective date of the previous page, and show the intended effective date of the revised page. Amendments in electronic format shall conform to the requirements of § 221.202 and other applicable provisions of subpart R.

§ 221.72 Reinstating canceled or expired tariff provisions.

Any fares, rules, or other tariff provisions which have been canceled or which have expired may be reinstated only by republishing such provisions and posting and filing the tariff publications (containing such republished provisions) on lawful notice in the form and manner required by this part.

Subpart I—Suspension of Tariff Provisions by Department

§ 221.80 Effect of suspension by Department.

(a) *Suspended matter not to be used.* A fare, charge, or other tariff provision which is suspended by the Department, under authority of chapter 415 of the

statute, shall not be used during the period of suspension specified by the Department's order.

(b) *Suspended matter not to be changed.* A fare, charge, or other tariff provision which is suspended by the Department shall not be changed in any respect or withdrawn or the effective date thereof further deferred except by authority of an order or special tariff permission of the Department.

(c) *Suspension continues former matter in effect.* If a tariff publication containing matter suspended by the Department directs the cancellation of a tariff or any portion thereof, which contains fares, charges, or other tariff provisions sought to be amended by the suspended matter, such cancellation is automatically suspended for the same period insofar as it purports to cancel any tariff provisions sought to be amended by the suspended matter.

(d) *Matter continued in effect not to be changed.* A fare, charge, or other tariff provision which is continued in effect as a result of a suspension by the Department shall not be changed during the period of suspension unless the change is authorized by order or special tariff permission of the Department, except that such matter may be reissued without change during the period of suspension.

§ 221.81 Suspension supplement.

(a) *Suspension supplement.* Upon receipt of an order of the Department suspending any tariff publication in part or in its entirety, the carrier or agent who issued such tariff publication shall immediately issue and file with the Department a consecutively numbered supplement for the purpose of announcing such suspension.

(b) The suspension supplement shall not contain an effective date and it shall contain the suspension notice required by paragraph (c) of this section.

(c) *Suspension notice.* The suspension supplement shall contain a prominent notice of suspension which shall:

(1) Indicate what particular fares, charges, or other tariff provisions are under suspension,

(2) State the date to which such tariff matter is suspended,

(3) State the Department's docket number and order number which suspended such tariff matter, and

(4) Give specific reference to the tariffs (specifying their D.O.T. or other identifying numbers), original or revised records and paragraphs or provisions which contain the fares, charges, or other tariff provisions continued in effect.

§ 221.82 Reissue of matter continued in effect by suspension to be canceled upon termination of suspension.

When tariff provisions continued in effect by a suspension are reissued during the period of such suspension, the termination of the suspension and the coming into effect of the suspended matter will not accomplish the cancellation of such reissued matter. In such circumstances, prompt action shall be taken by the issuing agent or carrier to cancel such reissued provisions upon the termination of the suspension in order that they will not conflict with the provisions formerly under suspension.

§ 221.83 Tariff must be amended to make suspended matter effective.

(a) When the Department vacates an order which suspended certain tariff matter in full or in part, such matter will not become effective until the termination of the suspension period unless the issuing agent or carrier amends the pertinent tariffs in the manner prescribed in this subpart (except as provided in paragraph (b) of this section).

(b) If the Department vacates its suspension order prior to the original published effective date of the tariff provisions whose suspension is vacated, such provisions will become effective on their published effective date.

§ 221.84 Cancellation of suspended matter subsequent to date to which suspended.

(a) *Endeavor to cancel prior to expiration of suspension period.* When an order of the Department requires the cancellation of tariff provisions which were suspended by the Department and such cancellation is required to be made effective on or before a date which is after the date to which such tariff provisions were suspended, the issuing carrier or agent shall, if possible, make the cancellation effective prior to the date to which such tariff provisions were suspended.

(b) *When necessary to republish matter continued in effect by suspension.* If suspended tariff provisions become effective upon expiration of their suspension period and thereby accomplish the cancellation of the tariff provisions continued in effect by the suspension, the issuing agent or carrier shall republish and reestablish such canceled tariff provisions effective simultaneously with the cancellation of the suspended provisions in compliance with the Department's order. The tariff amendments which reestablish such canceled tariff provisions shall bear reference to this subpart and the Department's order.

Subpart J—Filing Tariff Publications With Department

§ 221.90 Required notice.

(a) *Statutory notice required.* Unless otherwise authorized by the Department or specified in a bilateral agreement between the United States and a foreign country, all tariff filings shall be made on the following schedule, whether or not they effect any changes:

(1) At least 30 days before they are to become effective, for tariffs stating a passenger fare within the zone created by section 41509(e) of the statute or stating a rule that affects only such a fare;

(2) At least 25 days before they are to become effective, for matching tariffs that are to become effective on the same date as the tariff to be matched and that meet competition as described in § 221.94(c)(1)(v); and

(3) At least 60 days before they are to become effective, for all other tariffs.

(b) *Computing number of days' notice.* A tariff publication shall be deemed to be filed only upon its actual receipt by the Department, and the first day of any required period of notice shall be the day of actual receipt by the Department.

(c) *Issued date.* All tariff publications must be received by the Department on or before the designated issued date.

§ 221.91 Delivering tariff publications to Department.

Tariff publications will be received for filing only by delivery thereof to the Department electronically, through normal mail channels, or by delivery thereof during established business hours directly to that office of the Department charged with the responsibility of processing tariffs. No tariff publication will be accepted by the Department unless it is delivered free from all charges, including claims for postage.

§ 221.92 Number of copies required.

Two copies of each paper tariff, tariff revision and adoption notice to be filed shall be sent to the Office of International Aviation, Department of Transportation, Washington, DC 20428. All such copies shall be included in one package and shall be accompanied by a letter of tariff transmittal.

§ 221.93 Concurrences or powers of attorney not previously filed to accompany tariff transmittal.

When a tariff is filed on behalf of a carrier participating therein under authority of its concurrence or power of attorney, such concurrence or power of attorney shall, if not previously filed with the Department, be transmitted at

the same time such tariff is submitted for filing.

§ 221.94 Explanation and data supporting tariff changes and new matter in tariffs.

When a tariff is filed with the Department which contains new or changed local or joint fares or charges for foreign air transportation, or new or changed classifications, rules, regulations, or practices affecting such fares or charges, or the value of the service thereunder, the issuing air carrier, foreign air carrier, or agent shall submit with the filing of such tariff:

(a) An explanation of the new or changed matter and the reasons for the filing, including (if applicable) the basis of rate making employed. Where a tariff is filed pursuant to an intercarrier agreement approved by the Department, the explanation shall identify such agreement by DOT Docket number, DOT order of approval number, IATA resolution number, or if none is designated, then by other definite identification. Where a tariff is filed on behalf of a foreign air carrier pursuant to a Government order, a copy of such order shall be submitted with the tariff.

(b) Appropriate Economic data and/or information in support of the new or changed matter.

(c) Exceptions: (1) The requirement for data and/or information in paragraph (b) of this section will not apply to tariff publications containing new or changed matter which are filed:

(i) In response to Department orders or specific policy pronouncements of the Department directly related to such new or changed matter;

(ii) Pursuant to an intercarrier agreement approved by the Department setting forth the fares, charges (or specific formulas therefor) or other matter: Provided that the changes are submitted with the number of the DOT order of approval and fully comply with any conditions set forth in that order;

(iii) To the extent fares for scheduled passenger service are within a statutory or Department-established zone of fare flexibility; and

(iv) To meet competition: Provided, that

(A) Changed matter will be deemed to have been filed to meet competition only when it effects decreases in fares or charges and/or increases the value of service so that the level of the fares or charges and the services provided will be substantially similar to the level of fares or charges and the services of a competing carrier or carriers.

(B) New matter will be deemed to have been filed to meet competition only when it establishes or affects a fare or charge and a service which will be substantially similar to the fares or charges and the services of a competing carrier or carriers.

(C) When new or changed matter is filed to meet competition over a portion of the filing air carrier's system and is simultaneously made applicable to the balance of the system, such matter, insofar as it applies over the balance of the system, will be deemed to be within the exception in this paragraph (c)(1)(iv) of this section only if such carrier submits an explanation as to the necessity of maintaining uniformity over its entire system with respect to such new or changed matter.

(D) In any case where new or changed matter is filed to meet competition, the filing carrier or agent must supply, as part of the filing justification, the complete tariff references which will serve to identify the competing tariff matter which the tariff purports to meet. In such case the justification or attachment shall state whether the new or changed matter is identical to the competing tariff matter which it purports to meet or whether it approximates the competing tariff matter. If the new or changed matter is not identical, the transmittal letter or attachment shall contain a statement explaining, in reasonable detail, the basis for concluding that the tariff publication being filed is substantially similar to the competing tariff matter.

(2) [Reserved].

Subpart K—Availability of Tariff Publications for Public Inspection

§ 221.100 Public notice of tariff information.

Carriers must make tariff information available to the general public, and in so doing must comply with either:

(a) Sections 221.101, 221.102, 221.103, 221.104, 221.105, and 221.106, or

(b) Sections 221.105, 221.106 and 221.107 of this subpart.

§ 221.101 Inspection at stations, offices, or locations other than principal or general office.

(a) Each carrier shall make available for public inspection at each of its stations, offices, or other locations at which tickets for passenger transportation are sold and which is in charge of a person employed exclusively by the carrier, or by it jointly with another person, all tariffs applicable to passenger traffic from or to the point where such station, office, or location is situated, including tariffs covering any terminal services, charges, or practices whatsoever, which apply to passenger traffic from or to such point.

(b) A carrier will be deemed to have complied with the requirement that it ''post'' tariffs, if it maintains at each station, office, or location a file in complete form of all tariffs required to be posted; and in the case of tariffs involving passenger fares, rules, charges or practices, notice to the passenger as required in § 221.105.

(c) Tariffs shall be posted by each carrier party thereto no later than the filed date designated thereon except that in the case of carrier stations, offices or locations situated outside the United States, its territories and possessions, the time shall be not later than five days after the filed date, and except that a tariff which the Department has authorized to be filed on shorter notice shall be posted by the carrier on like notice as authorized for filing.

§ 221.102 Accessibility of tariffs to the public.

Each file of tariffs shall be kept in complete and accessible form. Employees of the carrier shall be required to give any desired information contained in such tariffs, to lend assistance to seekers of information therefrom, and to afford inquirers opportunity to examine any of such tariffs without requiring the inquirer to assign any reason for such desire.

§ 221.103 Notice of tariff terms.

Each carrier shall cause to be displayed continuously in a conspicuous public place at each station, office, or location at which tariffs are required to be posted, a notice printed in large type reading as follows:

Public Inspection of Tariffs

All the currently effective passenger tariffs to which this company is a party and all passenger tariff publications which have been issued but are not yet effective are on file in this office, so far as they apply to traffic from or to. (Here name the point.) These tariffs may be inspected by any person upon request and without the assignment of any reason for such inspection. The employees of this company on duty in this office will lend assistance in securing information from the tariffs.

In addition, a complete file of all tariffs of this company, with indexes thereof, is maintained and kept available for public inspection at . (Here indicate the place or places where complete tariff files are maintained, including the street address, and where appropriate, the room number.)

§ 221.105 Special notice of limited liability for death or injury under the Warsaw Convention.

(a)(1) In addition to the other requirements of this subpart, each air carrier and foreign air carrier which, to any extent, avails itself of the limitation on liability to passengers provided by

the Warsaw Convention, shall, at the time of delivery of the ticket, furnish to each passenger whose transportation is governed by the Convention and whose place of departure or place of destination is in the United States, the following statement in writing:

Advice to International Passengers on Limitations of Liability

Passengers embarking upon a journey involving an ultimate destination or a stop in a country other than the country of departure are advised that the provisions of a treaty known as the Warsaw Convention may be applicable to their entire journey including the portion entirely within the countries of departure and destination. The Convention governs and in most cases limits the liability of carriers to passengers for death or personal injury to approximately $10,000.

Additional protection can usually be obtained by purchasing insurance from a private company. Such insurance is not affected by any limitation of the carrier's liability under the Warsaw Convention. For further information please consult your airline or insurance company representative.

(2) Provided, however, That when the carrier elects to agree to a higher limit of liability to passengers than that provided in Article 22(1) of the Warsaw Convention, such statement shall be modified to reflect the higher limit. The statement prescribed herein shall be printed in type at least as large as 10-point modern type and in ink contrasting with the stock on:

(i) Each ticket;

(ii) A piece of paper either placed in the ticket envelope with the ticket or attached to the ticket; or

(iii) The ticket envelope.

(b) Each air carrier and foreign air carrier which, to any extent, avails itself of the limitation on liability to passengers provided by the Warsaw Convention, shall also cause to be displayed continuously in a conspicuous public place at each desk, station, and position in the United States which is in the charge of a person employed exclusively by it or by it jointly with another person, or by any agent employed by such air carrier or foreign air carrier to sell tickets to passengers whose transportation may be governed by the Warsaw Convention and whose place of departure or destination may be in the United States, a sign which shall have printed thereon the statement prescribed in paragraph (a) of this section: Provided, however, That an air carrier, except an air taxi operator subject to part 298 of this subchapter, or foreign air carrier which provides a higher limitation of liability than that set forth in the Warsaw Convention and has signed a counterpart of the agreement among carriers providing for such higher limit, which agreement was approved by the Civil Aeronautics Board by Order E–23680, dated May 13, 1966 (31 FR 7302, May 19, 1966), may use the alternate form of notice set forth in the proviso to § 221.106(a) of this chapter in full compliance with the posting requirements of this paragraph. And provided further, That an air taxi operator subject to part 298 of this subchapter, which provides a higher limitation of liability than that set forth in the Warsaw Convention and has signed a counterpart of the agreement among carriers providing for such higher limit, which agreement was approved by the Civil Aeronautics Board by Order E–23680, dated May 13, 1966 (31 FR 7302, May 19, 1966), may use the following notice in the manner prescribed by this paragraph in full compliance with the posting requirements of this paragraph. Such statements shall be printed in bold faced type at least one-fourth of an inch high.

Advice to International Passengers on Limitation of Liability

Passengers traveling to or from a foreign country are advised that airline liability for death or personal injury and loss or damage to baggage may be limited by the Warsaw Convention and tariff provisions. See the notice with your ticket or contact your airline ticket office or travel agent for further information.

§ 221.106 Notice of limited liability for baggage; alternative consolidated notice of liability limitations.

(a)(1) Each air carrier and foreign air carrier which, to any extent, avails itself of limitations on liability for loss of, damage to, or delay in delivery of baggage shall cause to be displayed continuously in a conspicuous public place at each desk, station, and position in the United States which is in the charge of a person employed exclusively by it or by it jointly with another person, or by any agent employed by such air carrier or foreign air carrier to sell tickets to persons or accept baggage for checking, a sign which shall have printed thereon the following statement:

Notice of Limited Liability for Baggage

For most international travel (including domestic portions of international journeys) liability for loss, delay, or damage to baggage is limited to approximately $9.07 per pound for checked baggage and $400 per passenger for unchecked baggage unless a higher value is declared and an extra charge is paid. Special rules may apply for valuables. Consult your carrier for details.

(2) Provided, however, that an air carrier or foreign air carrier which provides a higher limitation of liability for death or personal injury than that set forth in the Warsaw Convention and has signed a counterpart of the agreement approved by the Civil Aeronautics Board by Order E–23680, dated May 13, 1966 (31 FR 7302, May 19, 1966), may use the following notice in full compliance with the posting requirements of this paragraph and of § 221.105(b):

Advice to Passengers on Limitations of Liability

Airline liability for death or personal injury may be limited by the Warsaw Convention and tariff provisions in the case of travel to or from a foreign country.

For most international travel (including domestic portions of international journeys) liability for loss, delay or damage to baggage is limited to approximately $9.07 per pound for checked baggage and $400 per passenger for unchecked baggage unless a higher value is declared and an extra charge is paid. Special rules may apply to valuable articles.

See the notice with your tickets or consult your airline or travel agent for further information.

(3) Provided, however, That carriers may include in the notice the parenthetical phrase ''($20.00 per kilo)'' after the phrase ''$9.07 per pound'' in referring to the baggage liability limitation for most international travel. Such statements shall be printed in bold-face type at least one-fourth of an inch high and shall be so located as to be clearly visible and clearly readable to the traveling public.

(b)(1) Each air carrier and foreign air carrier which, to any extent, avails itself of limitations of liability for loss of, damage to, or delay in delivery of, baggage shall include on or with each ticket issued in the United States or in a foreign country by it or its authorized agent, the following notice printed in at least 10 point type:

Notice of Baggage Liability Limitations

For most international travel (including domestic portions of international journeys) liability for loss, delay, or damage to baggage is limited to approximately $9.07 per pound for checked baggage and $400 per passenger for unchecked baggage unless a higher value is declared in advance and additional charges are paid. Excess valuation may not be declared on certain types of valuable articles. Carriers assume no liability for fragile or perishable articles. Further information may be obtained from the carrier.

(2) Provided, however, that carriers may include in their ticket notice the parenthetical phrase ''($20.00 per kilo)'' after the phrase ''$9.07 per pound'' in referring to the baggage liability limitation for most international travel.

(c) It shall be the responsibility of each carrier to insure that travel agents authorized to sell air transportation for such carrier comply with the notice

provisions of paragraphs (a) and (b) of this section.

(d) Any air carrier or foreign air carrier subject to the provisions of this section which wishes to use a notice of limited liability for baggage of its own wording, but containing the substance of the language prescribed in paragraphs (a) and (b) of this section may substitute a notice of its own wording upon approval by the Department.

(e) The requirements as to time and method of delivery of the notice (including the size of type) specified in paragraphs (a) and (b) of this section and the requirement with respect to travel agents specified in paragraph (c) may be waived by the Department upon application and showing by the carrier that special and unusual circumstances render the enforcement of the regulations impractical and unduly burdensome and that adequate alternative means of giving notice are employed.

(f) Applications for relief under paragraphs (d) and (e) of this section shall be filed with the Department's Office of International Aviation not later than 15 days before the date on which such relief is requested to become effective.

(g) Notwithstanding any other provisions of this section, no air taxi operator subject to part 298 of this subchapter shall be required to give the notices prescribed in this section, either in its capacity as an air carrier or in its capacity as an agent for an air carrier or foreign air carrier.

§ 221.107 Notice of contract terms.

(a) *Terms incorporated in the contract of carriage.* (1) A ticket, or other written instrument that embodies the contract of carriage for foreign air transportation shall contain or be accompanied by notice to the passenger as required in paragraphs (b) and (d) of this section.

(2) Each carrier shall make the full text of all terms that are incorporated in a contract of carriage readily available for public inspection at each airport or other ticket sales office of the carrier: Provided, That the medium, *i.e.*, printed or electronic, in which the incorporated terms and conditions are made available to the consumer shall be at the discretion of the carrier.

(3) Each carrier shall display continuously in a conspicuous public place at each airport or other ticket sales office of the carrier a notice printed in large type reading as follows:

Explanation of Contract Terms

All passenger (and/or cargo as applicable) contract terms incorporated into the contract of carriage to which this company is a party are available in this office. These provisions may be inspected by any person upon request and for any reason. The employees of this office will lend assistance in securing information, and explaining any terms.

In addition, a file of all tariffs of this company, with indexes thereof, from which incorporated contract terms may be obtained is maintained and kept available for public inspection at. (Here indicate the place or places where tariff files are maintained, including the street address and, where appropriate, the room number.)

(4) Each carrier shall provide to the passenger a complete copy of the text of any/all terms and conditions applicable to the contract of carriage, free of charge, immediately, if feasible, or otherwise promptly by mail or other delivery service, upon request at any airport or other ticket sales office of the carrier. In addition, all other locations where the carrier's tickets may be issued shall have available at all times, free of charge, information sufficient to enable the passenger to request a copy of such term(s).

(b) *Notice of incorporated terms.* Each carrier and ticket agent shall include on or with a ticket or other written instrument given to the passenger, that embodies the contract of carriage, a conspicuous notice that:

(1) The contract of carriage may incorporate terms and conditions by reference; passengers may inspect the full text of each applicable incorporated term at any of the carrier's airport locations or other ticket sales offices of the carrier; and passengers, shippers and consignees have the right to receive, upon request at any airport or other ticket sales office of the carrier, a free copy of the full text of any/all such terms by mail or other delivery service;

(2) The incorporated terms may include, among others, the terms shown in paragraphs (b)(2) (i) through (iv) of this section. Passengers may obtain a concise and immediate explanation of the terms shown in paragraphs (b)(2) (i) through (iv) of this section from any location where the carrier's tickets are sold.

(i) Limits on the carrier's liability for personal injury or death of passengers (subject to § 221.105), and for loss, damage, or delay of goods and baggage, including fragile or perishable goods.

(ii) Claim restrictions, including time periods within which passengers must file a claim or bring an action against the carrier for its acts or omissions or those of its agents.

(iii) Rules about re-confirmations or reservations, check-in times, and refusal to carry.

(iv) Rights of the carrier and limitations concerning delay or failure to perform service, including schedule changes, substitution of alternate carrier or aircraft, and rerouting.

(c) *Explanation of incorporated terms.* Each carrier shall ensure that any passenger can obtain from any location where its tickets are sold or any similar documents are issued, a concise and immediate explanation of any term incorporated concerning the subjects listed in paragraph (b)(2) or identified in paragraph (d) of this section.

(d) *Direct notice of certain terms.* A passenger must receive conspicuous written notice, on or with the ticket, or other similar document, of the salient features of any terms that restrict refunds of the price of the transportation, impose monetary penalties on customers, or permit a carrier to raise the price or impose more restrictive conditions of contract after issuance of the ticket.

§ 221.108 Transmission of tariff filings to subscribers.

(a) Each carrier required to file tariffs in accordance with this part shall make available to any person so requesting a subscription service as described in paragraph (b) of this section for its passenger tariffs issued by it or by a publishing agent on its behalf.

(b) Under the required subscription service one copy of each new tariff publication, including the justification required by § 221.94, must be transmitted to each subscriber thereto by first-class mail (or other equivalent means agreed upon by the subscriber) not later than one day following the time the copies for official filing are transmitted to the Department. The subscription service described in this section shall not preclude the offering of additional types of subscription services by carriers or their agents.

(c) The carriers or their publishing agents at their option may establish a charge for providing the required subscription service to subscribers: Provided, That the charge may not exceed a reasonable estimate of the added cost of providing the service.

Subpart L—Rejection of Tariff Publications

§ 221.110 Department's authority to reject.

The Department may reject any tariff which is not consistent with section 41504 of the statute, with the regulations in this part, or with Department orders.

§ 221.111 Notification of rejection.

When a tariff is rejected, the issuing carrier or agent thereof will be notified electronically or in writing that the tariff is rejected and of the reason for such rejection.

§ 221.112 Rejected tariff is void and must not be used.

A tariff rejected by the Department is void and is without any force or effect whatsoever. Such rejected tariff must not be used.

Subpart M—Special Tariff Permission to File on Less Than Statutory Notice

§ 221.120 Grounds for approving or denying Special Tariff Permission applications.

(a) *General authority.* The Department may permit changes in fares, charges or other tariff provisions on less than the statutory notice required by section 41505 of the statute.

(b) *Grounds for approval.* The following facts and circumstances constitute some of the grounds for approving applications for Special Tariff Permission in the absence of other facts and circumstances warranting denial:

(1) *Clerical or typographical errors.* Clerical or typographical errors in tariffs constitute grounds for approving applications for Special Tariff Permission to file on less than statutory notice the tariff changes necessary to correct such errors. Each application for Special Tariff Permission based on such grounds shall plainly specify the errors and contain a complete statement of all the attending facts and circumstances, and such application shall be presented to the Department with reasonable promptness after issuance of the defective tariff.

(2) *Rejection caused by clerical or typographical errors or unintelligibility.* Rejection of a tariff caused by clerical or typographical errors constitute grounds for approving applications for Special Tariff Permission to file on less than statutory notice, effective not earlier than the original effective dates in the rejected tariff, all changes contained in the rejected tariff but with the errors corrected. Each application for the grant of Special Tariff Permission based on such grounds shall plainly specify the errors and contain a complete statement of all the attending facts and circumstances, and such application shall be filed with the Department within five days after receipt of the Department's notice of rejection.

(3) *Newly authorized transportation.* The fact that the Department has newly authorized a carrier to perform foreign air transportation constitutes grounds for approving applications for Special Tariff Permission to file on less than statutory notice the fares, rates, and other tariff provisions covering such newly authorized transportation.

(4) The fact that a passenger fare is within a statutory or Department-established zone of fare flexibility constitutes grounds for approving an application for Special Tariff Permission to file a tariff stating that fare and any rules affecting them exclusively, on less than statutory notice. The Department's policy on approving such applications is set forth in § 399.35 of this chapter.

(5) *Lowered fares and charges.* The prospective lowering of fares or charges to the traveling public constitutes grounds for approving an application for Special Tariff Permission to file on less than statutory notice a tariff stating the lowered fares or charges and any rules affecting them exclusively. However, the Department will not approve the application if the proposed tariff raises significant questions of lawfulness, as set forth in § 399.35 of this chapter.

(c) *Filing notice required by formal order.* When a formal order of the Department requires the filing of tariff matter on a stated number of days' notice, an application for Special Tariff Permission to file on less notice will not be approved. In any such instance a petition for modification of the order should be filed in the formal docket.

§ 221.121 How to prepare and file applications for Special Tariff Permission.

(a) *Form.* Each application for Special Tariff Permission to file a tariff on less than statutory notice shall conform to the requirements of § 221.212 if filed electronically.

(b) *Number of paper copies and place of filing.* For paper format applications, the original and one copy of each such application for Special Tariff Permission, including all exhibits thereto and amendments thereof, shall be sent to the Office of International Aviation, Department of Transportation, Washington, DC 20590.

(c) *Who may make application.* Applications for Special Tariff Permission to file fares, or other tariff provisions on less than statutory notice shall be made only by the issuing carrier or agent authorized to issue and file the proposed tariff. Such application by the issuing carrier or agent will constitute application on behalf of all carriers participating in the proposed fares, or other tariff provisions.

(d) *When notice is required.* Notice in the manner set forth in paragraph (e) of this section is required when a carrier files an application for Special Tariff Permission:

(1) To offer passenger fares that would be outside a Department-established zone of price flexibility or, in markets for which the Department has not established such a zone, outside the statutory zone of price flexibility; or

(2) To file any price increase or rule change that the carrier believes is likely to be controversial.

(e) *Form of notice.* When notice of filing of a Special Tariff Permission application affecting passenger fares is required by paragraph (d) of this section, the carrier shall, when it files the application, give immediate telegraphic notice or other notice approved by the Office of International Aviation, to all certificated and foreign route carriers authorized to provide nonstop or one-stop service in the markets involved, and to civic parties that would be substantially affected. The application shall include a list of the parties notified.

§ 221.122 Special Tariff Permission to be used in its entirety as granted.

Each Special Tariff Permission to file fares, or other tariff provisions on less than statutory notice shall be used in its entirety as granted. If it is not desired to use the permission as granted, and lesser or more extensive or different permission is desired, a new application for Special Tariff Permission conforming with § 221.121 in all respects and referring to the previous permission shall be filed.

§ 221.123 Re-use of Special Tariff Permission when tariff is rejected.

If a tariff containing matter issued under Special Tariff Permission is rejected, the same Special Tariff Permission may be used in a tariff issued in lieu of such rejected tariff provided that such re-use is not precluded by the terms of the Special Tariff Permission, and is made within the time limit thereof or within seven days after the date of the Department's notice of rejection, whichever is later, but in no event later than fifteen days after the expiration of the time limit specified in the Special Tariff Permission.

Subpart N—Waiver of Tariff Regulations

§ 221.130 Applications for waiver of tariff regulations.

Applications for waiver or modification of any of the requirements of this part 221 or for modification of chapter 415 of the statute with respect to the filing and posting of tariffs shall be made by the issuing carrier or issuing agent.

§ 221.131 Form of application for waivers.

Applications for waivers shall be in the form of a letter addressed to the Office of International Aviation, Department of Transportation Washington, DC 20590, and shall:

(a) Specify (by section and paragraph) the particular regulation which the applicant desires the Department to waive.

(b) Show in detail how the proposed provisions will be shown in the tariff under authority of such waiver if granted (submitting exhibits of the proposed provision where necessary to clearly show this information).

(c) Set forth all facts and circumstances on which the applicant relies as warranting the Department's granting the authority requested. No tariff or other documents shall be filed pursuant to such application prior to the Department's granting the authority requested.

Subpart O—Giving and Revoking Concurrences to Carriers

§ 221.140 Method of giving concurrence.

(a) A concurrence prepared in a manner acceptable to the Office of International Aviation shall be used by a carrier to give authority to another carrier to issue and file with the Department tariffs which contain joint fares or charges, including provisions governing such fares or charges, applying to, from, or via points served by the carrier giving the concurrence. A concurrence shall not be used as authority to file joint fares or charges in which the carrier to whom the concurrence is given does not participate, and it shall not be used as authority to file local fares or charges.

(b) *Number of copies.* Each concurrence shall be prepared in triplicate. The original of each concurrence shall be filed with the Department, the duplicate thereof shall be given to the carrier in whose favor the concurrence is issued, and the third copy shall be retained by the carrier who issued the concurrence.

(c) *Conflicting authority to be avoided.* Care should be taken to avoid giving authority to two or more carriers which, if used, would result in conflicting or duplicate tariff provisions.

§ 221.141 Method of revoking concurrence.

(a) A concurrence may be revoked by filing with the Department a Notice of Revocation of Concurrence prepared in a form acceptable to the Office of International Aviation.

(b) *Sixty days' notice required.* Such Notice of Revocation of Concurrence shall be filed on not less than sixty days' notice to the Department. A Notice of Revocation of Concurrence will be deemed to be filed only upon its actual receipt by the Department, and the period of notice shall commence to run only from such actual receipt.

(c) *Number of copies.* Each Notice of Revocation of Concurrence shall be prepared in triplicate. The original thereof shall be filed with the Department and, at the same time that the original is transmitted to the Department, the duplicate thereof shall be sent to the carrier to whom the concurrence was given. The third copy shall be retained by the carrier issuing such notice.

(d) *Amendment of tariffs when concurrence revoked.* When a concurrence is revoked, a corresponding amendment of the tariff or tariffs affected shall be made by the issuing carrier of such tariffs, on not less than statutory notice, to become effective not later than the effective date stated in the Notice of Revocation of Concurrence. In the event of failure to so amend the tariff or tariffs, the provisions therein shall remain applicable until lawfully canceled.

§ 221.142 Method of withdrawing portion of authority conferred by concurrence.

If a carrier desires to issue a concurrence conferring less authority than a previous concurrence given to the same carrier, the new concurrence shall not direct the cancellation of such previous concurrence. In such circumstances, such previous concurrence shall be revoked by issuing and filing a Notice of Revocation of Concurrence in a form acceptable to the Office of International Aviation. Such revocation notice shall include reference to the new concurrence.

Subpart P—Giving and Revoking Powers of Attorney to Agents

§ 221.150 Method of giving power of attorney.

(a) *Prescribed form of power of attorney.* A power of attorney prepared in accordance with a form acceptable to the Office of International Aviation shall be used by a carrier to give authority to an agent and (in the case of the agent being an individual) such agent's alternate to issue and file with the Department tariffs which contain local or joint fares or charges, including provisions governing such fares or charges, applicable via and for account of such carrier. Agents may be only natural persons or corporations (other than incorporated associations of air carriers). The authority conferred in a power of attorney may not be delegated to any other person.

(b) *Designation of tariff issuing person by corporate agent.* When a corporation has been appointed as agent it shall forward to the Department a certified excerpt of the minutes of the meeting of its Board of Directors designating by name and title the person responsible for issuing tariffs and filing them with the Department. Only one such person may be designated by a corporate agent, and the title of such designee shall not contain the word ''Agent''. When such a designee is replaced the Department shall be immediately notified in like manner of his successor. An officer or employee of an incorporated tariff-publishing agent may not be authorized to act as tariff agent in his/her individual capacity. Every tariff issued by a corporate agent shall be issued in its name as agent.

(c) *Number of copies.* Each power of attorney shall be prepared in triplicate. The original of each power of attorney shall be filed with the Department, the duplicate thereof shall be given to the agent in whose favor the power of attorney is issued, and the third copy shall be retained by the carrier who issued the power of attorney.

(d) *Conflicting authority prohibited.* In giving powers of attorney, carriers shall not give authority to two or more agents which, if used, would result in conflicting or duplicate tariff provisions.

§ 221.151 Method of revoking power of attorney.

(a) A power of attorney may be revoked only by filing with the Department in the manner specified in this section a Notice of Revocation of Power of Attorney in a form acceptable to the Office of International Aviation.

(b) *Sixty days' notice required.* Such Notice of Revocation of Power of Attorney shall be filed on not less than sixty days' notice to the Department. A Notice of Revocation of Power of Attorney will be deemed to be filed only upon its actual receipt by the Department, and the period of notice shall commence to run only from such actual receipt.

(c) *Number of copies.* Each Notice of Revocation of Power of Attorney shall be prepared in triplicate. The original thereof shall be filed with the Department and, at the same time that the original is transmitted to the Department, the duplicate thereof shall be sent to the agent in whose favor the power of attorney was issued (except, if the alternate agent has taken over the tariffs, the duplicate of the Notice of Revocation of Power of Attorney shall be sent to the alternate agent). The third copy of the notice shall be retained by the carrier.

(d) *Amendment of tariffs when power of attorney is revoked.* When a power of attorney is revoked, a corresponding amendment of the tariff or tariffs affected shall be made by the issuing

agent of such tariffs, on not less than statutory notice, to become effective not later than the effective date stated in the Notice of Revocation of Power of Attorney. In the event of failure to so amend the tariff or tariffs, the provisions therein shall remain applicable until lawfully canceled.

§ 221.152 Method of withdrawing portion of authority conferred by power of attorney.

If a carrier desires to issue a power of attorney conferring less authority than a previous power of attorney issued in favor of the same agent, the new power of attorney shall not direct the cancellation of such previous power of attorney. In such circumstances, such previous power of attorney shall be revoked by issuing and filing a Notice of Revocation of Power of Attorney in a form acceptable to the Office of International Aviation. Such revocation notice shall include reference to the new power of attorney.

Subpart Q—Adoption Publications Required to Show Change in Carrier's Name or Transfer of Operating Control

§ 221.160 Adoption notice.

(a) When the name of a carrier is changed or when its operating control is transferred to another carrier (including another company which has not previously been a carrier), the carrier which will thereafter operate the properties shall immediately issue, file with the Department, and post for public inspection, an adoption notice in a form and containing such information as is approved by the Office of International Aviation. (The carrier under its former name or the carrier from whom the operating control is transferred shall be referred to in this subpart as the ''former carrier'', and the carrier under its new name or the carrier, company, or fiduciary to whom the operating control is transferred shall be referred to in this subpart as the ''adopting carrier''.)

(b) The adoption notice shall be prepared, filed, and posted as a tariff. The adoption notice shall be issued and filed by the adopting carrier and not by an agent.

(c) *Copies to be sent to agents and other carriers.* At the same time that the adoption notice is transmitted to the Department for filing, the adopting carrier shall send copies of such adoption notice to each agent and carrier to whom the former carrier has given a power of attorney or concurrence. (See § 221.163.)

§ 221.161 Notice of adoption to be filed in former carrier's tariffs.

At the same time that the adoption notice is issued, posted, and filed pursuant to § 221.160, the adopting carrier shall issue, post and file with the Department a notice in each effective tariff issued by the former carrier providing specific notice of the adoption in a manner authorized by the Office of International Aviation and which shall contain no matter other than that authorized.

§ 221.162 Receiver shall file adoption notices.

A receiver shall, immediately upon assuming control of a carrier, issue and file with the Department an adoption notices as prescribed by §§ 221.160 and 221.161 and shall comply with the requirements of this subpart.

§ 221.163 Agents' and other carriers' tariffs shall reflect adoption.

If the former carrier is shown as a participating carrier under concurrence in tariffs issued by other carriers or is shown as a participating carrier under power of attorney in tariffs issued by agents, the issuing carriers and agents of such tariffs shall, upon receipt of the adoption notice, promptly file on statutory notice the following amendments to their respective tariffs:

(a) Cancel the name of the former carrier from the list of participating carriers.

(b) Add the adopting carrier (in alphabetical order) to the list of participating carriers. If the adopting carrier already participates in such tariff, reference to the substitution notice shall be added in connection with such carrier's name in the list of participating carriers.

§ 221.164 Concurrences or powers of attorney to be reissued.

(a) Adopting carrier shall reissue adopted concurrences and powers of attorney. Within a period of 120 days after the date on which the change in name or transfer of operating control occurs, the adopting carrier shall reissue all effective powers of attorney and concurrences of the former carrier by issuing and filing new powers of attorney and concurrences, in the adopting carrier's name, which shall direct the cancellation of the respective powers of attorney and concurrences of the former carrier. The adopting carrier shall consecutively number its powers of attorney and concurrences in its own series of power of attorney numbers and concurrence numbers (commencing with No. 1 in each series if it had not previously filed any such instruments with the Department), except that a receiver or other fiduciary shall consecutively number its powers of attorney or concurrences in the series of the former carrier. The cancellation reference shall show that the canceled power of attorney or concurrence was issued by the former carrier.

(b) If such new powers of attorney or concurrences confer less authority than the powers of attorney or concurrences which they are to supersede, the new issues shall not direct the cancellation of the former issues; in such instances, the provisions of § 221.142 and 221.152 shall be observed. Concurrences and powers of attorney which will not be replaced by new issues shall be revoked in the form and manner and upon the notice required by §§ 221.141 and 221.151.

(c) *Reissue of other carriers' concurrences issued in favor of former carrier.* Each carrier which has given a concurrence to a carrier whose tariffs are subsequently adopted shall reissue the concurrence in favor of the adopting carrier. If the carrier which issued the concurrence to the former carrier desires to revoke it or desires to replace it with a concurrence conferring less authority, the provisions of §§ 221.141 and 221.142 shall be observed.

§ 221.165 Cessation of operations without successor.

If a carrier ceases operations without having a successor, it shall:

(a) File a notice in each tariff of its own issue and cancel such tariff in its entirety.

(b) Revoke all powers of attorney and concurrences which it has issued.

Subpart R—Electronically Filed Tariffs

§ 221.170 Applicability of the subpart.

(a) Every air carrier and foreign air carrier shall file its international passenger fares tariffs consistent with the provisions of this subpart, and part 221 generally. Additionally, any air carrier and any foreign air carrier may file its international passenger rules tariffs electronically in machine-readable form as an alternative to the filing of printed paper tariffs as provided for elsewhere in part 221. This subpart applies to all carriers and tariff publishing agents and may be used by either if the carrier or agent complies with the provisions of subpart R. Any carrier or agent that files electronically under this subpart must transmit to the Department the remainder of the tariff in a form consistent with part 221, subparts A through Q, on the same day that the electronic tariff would be deemed received under § 221.190(b).

(b) To the extent that subpart R is inconsistent with the remainder of part

221, subpart R shall govern the filing of electronic tariffs. In all other respects, part 221 remains in full force and effect.

§ 221.180 Requirements for electronic filing of tariffs.

(a) No carrier or filing agent shall file an electronic tariff unless, prior to filing, it has signed a maintenance agreement or agreements, furnished by the Department of Transportation, for the maintenance and security of the on-line tariff database.

(b) No carrier or agent shall file an electronic tariff unless, prior to filing, it has submitted to the Department's Office of International Aviation, Pricing and Multilateral Affairs Division, and received approval of, an application containing the following commitments:

(1) The filer shall file tariffs electronically only in such format as shall be agreed to by the filer and the Department. (The filer shall include with its application a proposed format of tariff. The filer shall also submit to the Department all information necessary for the Department to determine that the proposed format will accommodate the data elements set forth in § 221.202.)

(2) The filer shall provide, maintain and install in the Public Reference Room at the Department (as may be required from time to time) one or more CRT devices and printers connected to its on-line tariff database. The filer shall be responsible for the transportation, installation, and maintenance of this equipment and shall agree to indemnify and hold harmless the Department and the U.S. Government from any claims or liabilities resulting from defects in the equipment, its installation or maintenance.

(3) The filer shall provide public access to its on-line tariff database, at Departmental headquarters, during normal business hours.

(4) The access required at Departmental headquarters by this subpart shall be provided at no cost to the public or the Department.

(5) The filer shall provide the Department access to its on-line tariff database 24 hours a day, 7 days a week, except, that the filer may bring its computer down between 6:00 a.m. and 6:00 p.m. Eastern Standard Time or Eastern Daylight Saving Time, as the case may be, on Sundays, when necessary, for maintenance or for operational reasons.

(6) The filer shall ensure that the Department shall have the sole ability to approve or disapprove electronically any tariff filed with the Department and the ability to note, record and retain electronically the reasons for approval or disapproval. The carrier or agent shall not make any changes in data or delete data after it has been transmitted electronically, regardless of whether it is approved, disapproved, or withdrawn. The filer shall be required to make data fields available to the Department in any record which is part of the on-line tariff database.

(7) The filer shall maintain all fares and rules filed with the Department and all Departmental approvals, disapprovals and other actions, as well as all Departmental notations concerning such approvals, disapprovals or other actions, in the on-line tariff database for a period of two (2) years after the fare or rule becomes inactive. After this period of time, the carrier or agent shall provide the Department, free of charge, with a copy of the inactive data on a machine-readable tape or other mutually acceptable electronic medium.

(8) The filer shall ensure that its on-line tariff database is secure against destruction or alteration (except as authorized by the Department), and against tampering.

(9) Should the filer terminate its business or cease filing tariffs, it shall provide to the Department on a machine-readable tape or any other mutually acceptable electronic medium, contemporaneously with the cessation of such business, a complete copy of its on-line tariff database.

(10) The filer shall furnish to the Department, on a daily basis, on a machine-readable tape or any other mutually acceptable electronic medium, all transactions made to its on-line tariff database.

(11) The filer shall afford any authorized Departmental official full, free, and uninhibited access to its facilities, databases, documentation, records, and application programs, including support functions, environmental security, and accounting data, for the purpose of ensuring continued effectiveness of safeguards against threats and hazards to the security or integrity of its electronic tariffs, as defined in this subpart.

(12) The filer must provide a field in the Government Filing File for the signature of the approving U.S. Government Official through the use of a Personal Identification Number (PIN).

(13) The filer shall provide a leased dedicated data conditioned circuit with sufficient capacity (not less than 28.8K baud rate) to handle electronic data transmissions to the Department. Further, the filer must provide for a secondary or a redundancy circuit in the event of the failure of the dedicated circuit. The secondary or redundancy circuit must be equal to or greater than 14.4K baud rate. In the event of a failure of the primary circuit the filer must notify the Chief of the Pricing and Multilateral Affairs Division of the Department's Office of International Aviation, as soon as possible, after the failure of the primary circuit, but not later than two hours after failure, and must provide the name of the contact person at the telephone company who has the responsibility for dealing with the problem.

(c) Each time a filer's on-line tariff database is accessed by any user during the sign-on function the following statement shall appear:

> The information contained in this system is for informational purposes only, and is a representation of tariff data that has been formally submitted to the Department of Transportation in accordance with applicable law or a bilateral treaty to which the U.S. Government is a party.

§ 221.190 Time for filing and computation of time periods.

(a) A tariff, or revision thereto, or a special tariff permission application may be electronically filed with the Department immediately upon compliance with § 221.180, and anytime thereafter, subject to § 221.400. The actual date and time of filing shall be noted with each filing.

(b) For the purpose of determining the date that a tariff, or revision thereto, filed pursuant to this subpart, shall be deemed received by the Department:

(1) For all electronic tariffs, or revisions thereto, filed before 5:30 p.m. local time in Washington, DC, on Federal business days, such date shall be the actual date of filing.

(2) For all electronic tariffs, or revisions thereto, filed after 5:30 p.m. local time in Washington, DC, on Federal business days, and for all electronic tariffs, or revisions thereto, filed on days that are not Federal business days, such date shall be the next Federal business day.

§ 221.195 Requirement for filing printed material.

(a) Any tariff, or revision thereto, filed in paper format which accompanies, governs, or otherwise affects, a tariff filed electronically, must be received by the Department on the same date that a tariff or revision thereto, is filed electronically with the Department under § 221.190(b). Further, such paper tariff, or revision thereto, shall be filed in accordance with the requirements of subparts A through Q of part 221. No tariff or revision thereto, filed electronically under this subpart, shall contain an effective date which is at variance with the effective date of the

supporting paper tariff, except as authorized by the Department.

(b) Any printed justifications, or other information accompanying a tariff, or revision thereto, filed electronically under this subpart, must be received by the Department on the same date as any tariff, or revision thereto, filed electronically.

(c) If a filer submits a filing which fails to comply with paragraph (a) of this section, or if the filer fails to submit the information in conformity with paragraph (b) of this section, the filing will be subject to rejection, denial, or disapproval, as applicable.

§ 221.200 Content and explanation of abbreviations, reference marks and symbols.

(a) *Content.* The format to be used for any electronic tariff must be that agreed to in advance as provided for in § 221.180, and must include those data elements set forth in § 221.202. Those portions that are filed in paper form shall comply in all respects with part 221, subparts A through Q.

(b) *Explanation of abbreviations, reference marks and symbols.* Abbreviations, reference marks and symbols which are used in the tariff shall be explained in each tariff.

(1) The following symbols shall be used:

R—Reduction
I—Increase
N—New Matter
X—Canceled Matter
C—Change in Footnotes, Routings, Rules or Zones
E—Denotes change in Effective Date only.

(2) Other symbols may be used only when an explanation is provided in each tariff and such symbols are consistent throughout all the electronically filed tariffs from that time forward.

§ 221.201 Statement of filing with foreign governments to be shown in air carrier's tariff filings.

(a) Every electronic tariff filed by or on behalf of an air carrier that contains fares which, by international convention or agreement entered into between any other country and the United States, are required to be filed with that country, shall include the following statement:

The rates, fares, charges, classifications, rules, regulations, practices, and services provided herein have been filed in each country in which filing is required by treaty, convention, or agreement entered into between that country and the United States, in accordance with the provisions of the applicable treaty, convention, or agreement.

(b) The statement referenced in § 221.201(a) may be included with each filing advice by the inclusion of a symbol which is properly explained.

(c) The required symbol may be omitted from an electronic tariff or portion thereof if the tariff publication that has been filed with any other country pursuant to its tariff regulations bears a tariff filing designation of that country in addition to the D.O.T. number appearing on the tariff.

§ 221.202 The filing of tariffs and amendments to tariffs.

All electronic tariffs and amendments filed under this subpart, including those for which authority is sought to effect changes on less than bilateral/statutory notice under § 221.212, shall contain the following data elements:

(a) A Filing Advice Status File—which shall include:

(1) Filing date and time;
(2) Filing advice number;
(3) Reference to carrier;
(4) Reference to geographic area;
(5) Effective date of amendment or tariff;
(6) A place for government action to be recorded; and
(7) Reference to the Special Tariff Permission when applicable.

(b) A Government Filing File—which shall include:

(1) Filing advice number;
(2) Carrier reference;
(3) Filing date and time;
(4) Proposed effective date;
(5) Justification text; reference to geographic area and affected tariff number;
(6) Reference to the Special Tariff Permission when applicable;
(7) Government control data, including places for:
(i) Name of the government analyst, except that this data shall not be made public, notwithstanding any other provision in this or any other subpart;
(ii) Action taken and reasons therefor.
(iii) Remarks, except that internal Departmental data shall not be made public, notwithstanding any other provision in this or any other subpart;
(iv) Date action is taken; and
(v) Personal Identification Number; and
(8) Fares tariff, or proposed changes to the fares tariffs, including:
(i) Market;
(ii) Fare code;
(iii) One-way/roundtrip (O/R);
(iv) Fare Amount;
(v) Currency;
(vi) Footnote (FN);
(vii) Rule Number, provided that, if the rule number is in a tariff, reference shall be made to that tariff containing the rule;
(viii) Routing (RG) Number(s), provided that the abbreviation MPM (Maximum Permissible Routing) shall be considered a number for the purpose of this file;
(ix) Effective date and discontinue date if the record has been superseded;
(x) Percent of change from previous fares; and
(xi) Expiration date.
(9) Rules tariff, or proposed changes to the rules tariffs.
(i) Rules tariffs shall include:
(A) *Title:* General description of fare rule type and geographic area under the rule;
(B) *Application:* Specific description of fare class, geographic area, type of transportation (one way, round-trip, etc.);
(C) *Period of Validity:* Specific description of permissible travel dates and any restrictions on when travel is not permitted;
(D) *Reservations/ticketing:* Specific description of reservation and ticketing provisions, including any advance reservation/ticketing requirements, provisions for payment (including prepaid tickets), and charges for any changes;
(E) *Capacity Control:* Specific description of any limitation on the number of passengers, available seats, or tickets;
(F) *Combinations:* Specific description of permitted/restricted fare combinations;
(G) *Length of Stay:* Specific description of minimum/maximum number of days before the passenger may/must begin return travel;
(H) *Stopovers:* Specific description of permissible conditions, restrictions, or charges on stopovers;
(I) *Routing:* Specific description of routing provisions, including transfer provisions, whether on-line or inter-line;
(J) *Discounts:* Specific description of any limitations, special conditions, and discounts on status fares, e.g. children or infants, senior citizens, tour conductors, or travel agents, and any other discounts;
(K) *Cancellation and Refunds:* Specific description of any special conditions, charges, or credits due for cancellation or changes to reservations, or for request for refund of purchased tickets;
(L) *Group Requirements:* Specific description of group size, travel conditions, group eligibility, and documentation;
(M) *Tour Requirements:* Specific description of tour requirements, including minimum price, and any stay or accommodation provisions;

(N) *Sales Restrictions:* Specific description of any restrictions on the sale of tickets;

(O) *Rerouting:* Specific description of rerouting provisions, whether on-line or inter-line, including any applicable charges; and

(P) *Miscellaneous provisions:* Any other applicable conditions.

(ii) Rules tariffs shall not contain the phrase ''intentionally left blank''.

(10) Any material accepted by the Department for informational purposes only shall be clearly identified as ''for informational purposes only, not part of official tariff'', in a manner acceptable to the Department.

(c) A Historical File—which shall include:

(1) Market;

(2) Fare code;

(3) One-way/roundtrip (O/R);

(4) Fare amount;

(5) Currency;

(6) Footnote (FN);

(7) Rule Number, provided that, if the rule number is in a tariff other than the fare tariff, reference shall be made to that tariff containing the rule;

(8) Rule text applicable to each fare at the time that the fare was in effect.

(9) Routing (RG) Number(s), provided that the abbreviation MPM (Maximum Permissible Routing) shall be considered a number for the purpose of this file;

(10) Effective Date;

(11) Discontinue Date;

(12) Government Action;

(13) Carrier;

(14) All inactive fares (two years);

(15) Any other fare data which is essential; and

(16) Any necessary cross reference to the Government Filing File for research or other purposes.

§ 221.203 Unique rule numbers required.

(a) Each ''bundled'' and ''unbundled'' normal economy fare applicable to foreign air transportation shall bear a unique rule number.

(b) The unique rule numbers for the fares specified in this section shall be set by mutual agreement between the filer and the Department prior to the implementation of any electronic filing system.

§ 221.204 Adoption of provisions of one carrier by another carrier.

When one carrier adopts the tariffs of another carrier, the effective and prospective fares of the adopted carrier shall be changed to reflect the name of the adopting carrier and the effective date of the adoption. Further, each adopted fare shall bear a notation which shall reflect the name of the adopted carrier and the effective date of the adoption, provided that any subsequent revision of an adopted fare may omit the notation.

§ 221.205 Justification and explanation for certain fares.

Any carrier or its agent must provide, as to any new or increased bundled or unbundled (whichever is lower) on-demand economy fare in a direct-service market, a comparison between, on the one hand, that proposed fare and, on the other hand, the ceiling fare allowed in that market based on the SFFL.

§ 221.206 Statement of fares.

All fares filed electronically in direct-service markets shall be filed as single factor fares.

§ 221.210 Suspension of tariffs.

(a) A fare, charge, rule or other tariff provision that is suspended by the Department pursuant to section 41509 of the statute shall be noted by the Department in the Government Filing File and the Historical File.

(b) When the Department vacates a tariff suspension, in full or in part, and after notification of the carrier by the Department, such event shall be noted by the carrier in the Government Filing File and the Historical File.

(c) When a tariff suspension is vacated or when the tariff becomes effective upon termination of the suspension period, the carrier or its agent shall refile the tariff showing the effective date.

§ 221.211 Cancellation of suspended matter.

When, pursuant to an order of the Department, the cancellation of rules, fares, charges, or other tariff provision is required, such action shall be made by the carrier by appropriate revisions to the tariff.

§ 221.212 Special tariff permission.

(a) When a filer submits an electronic tariff or an amendment to an electronic tariff for which authority is sought to effect changes on less than bilateral/statutory notice, and no related tariff material is involved, the submission shall bear a sequential filing advice number. The submission shall appear in the Government Filing File and the Filing Advice Status File, and shall be referenced in such a manner to clearly indicate that such changes are sought to be made on less than bilateral/statutory notice.

(b) When a filer submits an electronic tariff or an amendment to the electronic tariff for which authority is sought to effect changes on less than bilateral/statutory notice, and it contains related paper under § 221.195, the paper submission must bear the same filing advice number as that used for the electronic submission. Such paper submission shall be in the form of a revised tariff page rather than as a separate request for Special Tariff Permission. All material being submitted on a paper tariff page as part of an electronic submission will clearly indicate the portion(s) of such tariff page that is being filed pursuant to, and in conjunction with, the electronic submission on less than bilateral/statutory notice.

(c) Departmental action on the Special Tariff Permission request shall be noted by the Department in the Government Filing File and the Filing Advice Status File.

(d) When the paper portion of a Special Tariff Permission that has been filed with the Department pursuant to paragraph (b) of this section is disapproved or other action is taken by the Department, such disapproval or other action will be reflected on the next consecutive revision of the affected tariff page(s) in the following manner:

(1) The portion(s) of _____ Revised Page _____ filed under EFA No. _____ was/were disapproved by DOT.

(2) Example of other action: the portion(s) _____ Revised Page _____ filed under EFA No. _____ was/were required to be amended by DOT.

(e) When the Department disapproves in whole or in part or otherwise takes an action against any submission filed under this part, the filer must take corrective action within two business days following the disapproval or notice of other action.

(f) All submissions under this section shall comply with the requirements of § 221.202.

§ 221.300 Discontinuation of electronic tariff system.

In the event that the electronic tariff system is discontinued, or the source of the data is changed, or a filer discontinues its business, all electronic data records prior to such date shall be provided immediately to the Department, free of charge, on a machine-readable tape or other mutually acceptable electronic medium.

§ 221.400 Filing of paper tariffs required.

(a) After approval of any application filed under § 221.180 of this subpart to allow a filer to file tariffs electronically, the filer in addition to filing electronically must continue to file printed tariffs as required by subparts A through Q of part 221 for a period of 90

days, or until such time as the Department shall deem such filing no longer to be necessary: Provided that during the period specified by this section the filed printed tariff shall continue to be the official tariff.

(b) Upon notification to the filer that it may commence to file its tariffs solely in an electronic mode, concurrently with the implementation of filing electronically the filer shall:

(1) Furnish the Department with a copy of all the existing effective and prospective records on a machine-readable tape or other mutually acceptable electronic medium accompanied by an affidavit attesting to the accuracy of such records; and

(2) Simultaneously cancel such records from the paper tariff in the manner prescribed by subparts A through Q of part 221.

§ 221.500 Transmission of electronic tariffs to subscribers.

(a) Each filer that files an electronic tariff under this subpart shall make available to any person so requesting, a subscription service meeting the terms of paragraph (b) of this section.

(b) Under the required subscription service, remote access shall be allowed to any subscriber to the on-line tariff database, including access to the justification required by § 221.205. The subscription service shall not preclude the offering of additional services by the filer or its agent.

(c) The filer at its option may establish a charge for providing the required subscription service to subscribers: Provided that the charge may not exceed a reasonable estimate of the added cost of providing the service.

(d) Each filer shall provide to any person upon request, a copy of the machine-readable data (raw tariff data) of all daily transactions made to its on-line tariff database. The terms and prices for such value-added service may be set by the filer: Provided that such terms and prices shall be non-discriminatory, i.e., that they shall be substantially equivalent for all similarly-situated persons.

§ 221.550 Copies of tariffs made from filer's printer(s) located in Department's public reference room.

Copies of information contained in a filer's on-line tariff database may be obtained by any user at Departmental Headquarters from the printer or printers placed in Tariff Public Reference Room by the filer. The filer may assess a fee for copying, provided it is reasonable and that no administrative burden is placed on the Department to require the collection of the fee or to provide any service in connection therewith.

§ 221.600 Actions under assigned authority and petitions for review of staff action.

(a) When an electronically filed record which has been submitted to the Department under this subpart, is disapproved (rejected), or a special tariff permission is approved or denied, under authority assigned by the Department of Transportation's Regulations, 14 CFR 385.13, such actions shall be understood to include the following provisions:

(1) *Applicable to a Record or Records Which is/are Disapproved (rejected):* The record(s) disapproved (rejected) is/are void, without force or effect, and must not be used.

(2) *Applicable to a record or records which is/are disapproved (rejected), and to special tariff permissions which are approved or denied:* This action is taken under authority assigned by the Department of Transportation in its Organization Regulations, 14 CFR 385.13. Persons entitled to petition for review of this action pursuant to the Department's Regulations, 14 CFR 385.50, may file such petitions within seven days after the date of this action. This action shall become effective immediately, and the filing of a petition for review shall not preclude its effectiveness.

(b) [Reserved]

PART 250—OVERSALES

2. The authority citation for part 250 continues to read as follows:

Authority: 49 U.S.C. chapters 401, 411, 413, 417.

§ 250.4 [Removed]

3. Section 250.4—Denied boarding compensation tariffs for foreign air transportation is removed.

PART 293—[ADDED]

4. A new part 293 is added as follows:

PART 293—INTERNATIONAL PASSENGER TRANSPORTATION

Subpart A—General

Sec.
293.1 Applicability.
293.2 Definitions.

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Authority: 49 U.S.C. 40101, 40105, 40109, 40113, 40114, 41504, 41701, 41707, 41708, 41709, 41712, 46101; 14 CFR 1.56(j)(2)(ii).

Subpart A General

§ 293.1 Applicability.

This part applies to air carriers and foreign air carriers providing scheduled transportation of passengers and their baggage in foreign air transportation.

§ 293.2 Definitions.

For purposes of this part the definitions in § 221.3 of this chapter apply.

Subpart B—Exemption from Filing Tariffs

§ 293.10 Exemption.

(a) Air carriers and foreign air carriers are exempted from the duty to file passenger tariffs with the Department of Transportation, as required by 49 U.S.C. 41504 and 14 CFR part 221, as follows:

(1) The Assistant Secretary for Aviation and International Affairs will, by notice, issue and periodically update a list establishing the following categories of markets:

(i) In Category A markets, carriers are exempted from the duty to file all passenger tariffs, unless they are nationals of countries listed in Category C;

(ii) In Category B markets, carriers are exempted from the duty to file all passenger tariffs except those setting forth one-way economy-class fares and governing provisions pertaining thereto, unless they are nationals of countries listed in Category C;

(iii) In Category C markets, carriers shall continue to file all passenger tariffs, except as provided in § 293.10(b).

(2) The Assistant Secretary will list country-pair markets falling in Categories A and C, based on the determining factors in paragraphs (a)(2)(i) through (iv). All country-pair markets not listed in Categories A or C shall be considered to be in Category B and need not be specifically listed.

(i) Whether the U.S. has an aviation agreement in force with that country providing double-disapproval treatment of prices filed by the carriers of the Parties;

(ii) Whether the country's government has disapproved or deterred U.S. carrier price leadership or matching tariff filings in any market;

(iii) Whether the country's government has placed significant

restrictions on carrier entry or capacity in any market; and

(iv) Whether the country's government is honoring the provisions of the bilateral aviation agreement and there are no significant bilateral problems.

(b) By petition or on the Department's own initiative, new country-pair markets will be listed in the appropriate category, and existing country-pair markets may be transferred between categories.

(c) Air carriers and foreign air carriers are exempted from the duty to file governing rules tariffs containing general conditions of carriage with the Department of Transportation, as required by 49 U.S.C. 41504 and 14 CFR part 221. An initial description of the general conditions of carriage will be included in the Assistant Secretary's notice.

(d) Notwithstanding paragraph (c) of this section, air carriers and foreign air carriers shall file and maintain a tariff with the Department to the extent required by 14 CFR § 203.4 and other implementing regulations.

(f) Authority for determining what rules are covered by paragraph (c) and for determining the filing format for the tariffs required by paragraph (d) is delegated to the Director of the Office of International Aviation.

§ 293.11 Required statement.

Each governing rules tariff shall include the following statements:

(a) ''Rules herein containing general conditions of carriage are not part of the official U.S. D.O.T. tariff.''

(b) ''The rules and provisions contained herein apply only to the passenger fares and charges that the U.S. Department of Transportation requires to be filed as tariffs.''

§ 293.12 Revocation of exemption.

(a) The Department, upon complaint or upon its own initiative, may, immediately and without hearing, revoke, in whole or in part, the exemption granted by this part with respect to a carrier or carriers, when such action is in the public interest.

(b) Any such action will be taken in a notice issued by the Assistant Secretary for Aviation and International Affairs, and will identify the tariff matter to be filed, and the deadline for carrier compliance.

(c) Revocations under this section will have the effect of reinstating all applicable tariff requirements and procedures specified in the Department's Regulations for the tariff material to be filed, unless otherwise specified by the Department.

Subpart C—Effect of Exemption

§ 293.20 Rule of construction.

To the extent that a carrier holds an effective exemption from the duty to file tariffs under this part, it shall not, unless otherwise directed by order of the Department, be subject to tariff posting, notification or subscription requirements set forth in 49 U.S.C. 41504 or 14 CFR part 221, *except* as provided in § 293.21.

§ 293.21 Incorporation of contract terms by reference.

Carriers holding an effective exemption from the duty to file tariffs under this part may incorporate contract terms by reference (*i.e.,* without stating their full text) into the passenger ticket or other document embodying the contract of carriage for the scheduled transportation of passengers in foreign air transportation, *provided that:*

(a) The notice, inspection, explanation and other requirements set forth in 14 CFR 221.107, paragraphs (a), (b), (c) and (d) are complied with, to the extent applicable;

(b) In addition to other remedies at law, a carrier may not claim the benefit under this section as against a passenger, and a passenger shall not be bound by incorporation of any contract term by reference under this part unless the requirements of paragraph (a) of this section are complied with, to the extent applicable; and

(c) The purpose of this section is to set uniform disclosure requirements, which preempt any conflicting State requirements on the same subject, for incorporation of terms by reference into contracts of carriage for the scheduled transportation of passengers in foreign air transportation.

§ 293.22 Effectiveness of tariffs on file.

(a) Ninety days after the date of effectiveness of the Assistant Secretary's notice, passenger tariffs on file with the Department covered by the scope of the exemption will cease to be effective as tariffs under 49 U.S.C. 41504 and 41510, and the provisions of 14 CFR part 221, and will be canceled by operation of law.

(b) Ninety days after the date of effectiveness of the Assistant Secretary's notice, pending applications for filing and/or effectiveness of any passenger tariffs covered by the scope of the exemption, will be dismissed by operation of law. No new filings or applications will be permitted after the date of effectiveness of the Assistant Secretary's notice except as provided under § 293.12.

Issued in Washington, DC, on February 27, 1997.

Charles A. Hunnicutt,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 97–5361 Filed 3–7–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 163

[Docket Nos. 86P–0297 and 93P–0091]

White Chocolate; Proposal to Establish a Standard of Identity

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to establish a standard of identity for white chocolate. The proposed standard will provide for the use of the term ''white chocolate'' as the common or usual name of products made from cacao fat, milk solids, nutritive carbohydrate sweeteners, and other safe and suitable ingredients, but containing no nonfat cacao solids. This action responds principally to citizen petitions submitted separately by the Hershey Foods Corp. (Hershey) and by the Chocolate Manufacturers Association of the United States of America (CMA). FDA tentatively concludes that this action will promote honesty and fair dealing in the interest of consumers and, to the extent practicable, will achieve consistency with existing international standards of identity for white chocolate.

DATES: Written comments by May 27, 1997. The agency proposes that any final rule that may be issued based upon this proposal become effective January 1, 1998.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Geraldine A. June, Center for Food Safety and Applied Nutrition (HFS–158), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5099.

SUPPLEMENTARY INFORMATION:

I. Background

In the Federal Register of June 5, 1992 (57 FR 23989), FDA published a

tentative final rule (hereinafter referred to as the 1992 tentative final rule) to amend the standards of identity for cacao products in part 163 (21 CFR part 163). In section II.B. of the 1992 tentative final rule, FDA noted that it had received a comment that requested that the agency adopt a standard of identity for white chocolate. In support of that request, the comment argued that the absence of a standard of identity for this food had limited the introduction of ''white chocolate'' products into the market. The comment also noted the likelihood that consumer confusion would develop about the content of products informally referred to as ''white chocolate'' that may or may not contain any cacao-derived ingredients.

The comment observed that, in the absence of a standard of identity for this product, the term ''white chocolate'' would be prohibited under the existing standards of identity in part 163. Further, the comment stated that when such products have been introduced, firms have been forced to use alternative names to avoid the labeling constraints in the standards of identity.

In response to the comment, FDA recognized the dilemma faced by U.S. manufacturers of those confections that may be labeled ''white chocolate'' in other countries but stated that the adoption of a standard of identity for white chocolate was outside the scope of that rulemaking. The agency suggested that the manufacturer petition the agency to adopt a standard for this food. FDA pointed out that, in fact, in the Federal Register of September 16, 1991 (56 FR 46798), the agency had granted Hershey a temporary marketing permit (TMP) to test market a product called ''white chocolate.'' The permit provided for the temporary market testing of 23,608 kilograms (kg) (52,000 pounds (lb)) of the product for a period of 15 months.

Since publication of the 1992 tentative final rule, the agency has received several applications from chocolate manufacturers for TMP's for ''white chocolate.'' In the Federal Register of November 5, 1993 (58 FR 59050), the agency granted Hershey a new TMP for test products designated as ''white chocolate.'' The purpose of the new permit was to permit Hershey to collect data on consumer acceptance of the product over a wider area of distribution. Hershey said that it intended to use these data to support its citizen petition (filed December 15, 1992, Docket No. 86P–0297/CP2) (hereinafter referred to as the 1992 Hershey petition) for a standard of identity for white chocolate. In the November 5, 1993 notice, the agency announced that it had received a citizen petition from CMA (filed March 2, 1993, Docket No. 93P–0091) (hereinafter referred to as the 1993 CMA petition) that also requested that FDA establish a standard of identity for white chocolate.

In addition to Hershey, the agency has granted TMP's to Ganong Bros., Ltd., St. Stephen NB, Canada E3L 2X5 (58 FR 59050, November 5, 1993), the Pillsbury Co. (59 FR 32443, June 23, 1994), and Kraft General Foods, Inc. (59 FR 33976, July 1, 1994).

In the Federal Register of December 29, 1994 (59 FR 67302), FDA published a notice extending Hershey's TMP (Docket No. 93P–0310) and inviting interested persons to participate in the extended market test under the same conditions that applied under that TMP. Since January 1995, FDA has issued letters to The Proctor and Gamble Co., Brach and Brock (formerly E. J. Brach Corp.), Mauna Loa Macadamia Nut Corp., Nestlé Food Co., Kraft General Foods, MacFarms of Hawaii, Van Leer Chocolate Corp., and Wilbur Chocolate Co. acknowledging the firms' acceptance of the agency's invitation to participate in the extended market test of products identified as being or containing white chocolate. The aggregate effect of these TMP's is that up to 75 million kg (166 million lb) per annum of product consisting, in large part, of white chocolate has been, or will be, market tested. The majority of the firms are conducting nationwide market tests. The agency is currently evaluating requests from other firms to participate in the extended market test.

II. Petitions and Grounds

A. The 1992 Hershey Petition

Hershey, in its 1992 petition requesting that FDA establish a standard of identity for white chocolate, described the product named ''white chocolate'' as a food that deviates from the standardized cacao products in part 163 in that: (1) It is prepared without the nonfat components of the ground cacao nibs but contains the fat (cocoa butter) expressed from the ground cacao nibs; and (2) it may contain safe and suitable antioxidants. The petition further described ''white chocolate'' as the solid or semiplastic food prepared by mixing and grinding cocoa butter with one or more nutritive sweeteners and one or more of the optional dairy ingredients provided in part 163. It contains not less than 20 percent cocoa butter, not less than 14 percent of total milk solids, not less than 3.5 percent milkfat, and not more than 55 percent nutritive carbohydrate sweeteners. It may contain emulsifying agents, spices, natural and artificial flavorings and other seasonings, and antioxidants approved for food use. It contains no coloring material.

In support of its request, Hershey contended that, because there is currently no standard of identity for white chocolate, virtually all uses of the term ''white chocolate'' would be prohibited by the existing standards of identity for chocolate because they prescribe the presence of chocolate liquor (ground cacao nibs). Hershey argued that this requirement has acted as a practical deterrent to companies that have considered developing and marketing white chocolate products in the United States. The Hershey petition noted that when such products have been introduced and marketed in the United States, manufacturers have had to resort to labeling such products with descriptive terms other than ''white chocolate'' (e.g., ''white confection'') to avoid standardized food labeling issues. Hershey contended that, in many cases, the use of such alternative terminology has obscured the true nature of the product and could potentially mislead consumers. Therefore, Hershey maintained that the absence of a standard of identity for white chocolate, and the resulting uncertainty over nomenclature on labeling, have proven to be factors limiting the introduction of new products to meet consumer demand.

In further support of its petition, Hershey maintained that there exists a good likelihood of consumer confusion with regard to the content of products that are referred to informally as ''white chocolate'' but that may or may not contain any cacao-derived ingredients. According to Hershey, consumers expecting to purchase a white chocolate product may, in fact, be purchasing a vegetable fat coating-type product made from fats other than cacao fat, which may contain little or no cacao ingredients.

The Hershey petition also included a summary of the results of a consumer survey conducted in 1990 to determine the most common name used by adult candy consumers when shown a variety of confection products, including a white confection bar. The survey was conducted by personal interviews with 216 adults who eat candy regularly. After an introductory statement on how people use different names for the same product, respondents were shown a product and asked what they would call it. The procedure was repeated for two or more products—jelly beans, lollipops, and a white confection bar. Over 61 percent of the respondents used the term ''white chocolate'' to describe

the white confection bar that they were shown. An additional 10 percent of the respondents associated the bar product to chocolate. Hershey contended that, based on these results, it appears that the majority of candy consumers tend to identify the white confection as either ''white chocolate'' specifically or as some variety of chocolate.

Hershey pointed out that many countries that have adopted standards for cacao products have also recognized and established a standard of identity for white chocolate. Hershey argued that, in countries that have established a standard of identity for white chocolate, in contrast to the United States, consumers are able to evaluate the quality and value of the white chocolate products they purchase without having to resort to an analysis of the product ingredient declaration.

Hershey maintained that establishing a U.S. standard of identity for white chocolate would promote honesty and fair dealing in the interest of consumers and build consumer confidence in the food supply by establishing minimal criteria for a class of products that is becoming popular with consumers. According to Hershey, adoption of the suggested standard of identity for white chocolate will also enhance the ability of American manufacturers to compete in world markets. Hershey maintained that a U.S. standard will result in greater consistency in the international regulation of cacao products, while ensuring that domestic consumers are buying and consuming ''the real thing.''

B. The 1993 CMA Petition

In all substantive respects, the 1993 CMA petition agrees with the 1992 Hershey petition. In support of its request for a white chocolate standard, CMA noted that the standards of identity for cacao products permit only those products that contain a minimum level of chocolate liquor to be identified as chocolate. CMA maintained that, because there exists a product that consumers identify as ''white chocolate,'' it is essential that the industry define this product, and that FDA establish and enforce a standard of identity for white chocolate products to avoid economic deception and promote honesty and fair dealing in the interest of consumers.

Like Hershey, CMA contended that consumers are being presented with products that often contain low levels of cocoa butter (if any at all) and relatively high levels of noncacao vegetable fats which, except for coatings made with vegetable fats, are not permitted in standardized chocolate products. CMA further stated that products that identify themselves as ''white chocolate,'' but that do not meet CMA's suggested standard, represent a true deception of the consumer. According to CMA, consumer deception distorts individual purchasing decisions and prevents consumers from satisfying their product preferences. CMA asserted that FDA can reduce or prevent the continuation of such deception by establishing a standard of identity for white chocolate.

CMA further maintained that the absence of a standard of identity for white chocolate denies consumers the benefit of knowing that a white chocolate-type product that they purchase is, indeed, a true cacao product. In the absence of such a standard, the U.S. chocolate industry is unable to provide consumers with an identifiable white chocolate product that meets both their expectations and the industry's definition of quality.

CMA stated that the adoption of their suggested standard would have a positive effect on the marketability of, and competition among, chocolate products. CMA also acknowledged the submission to FDA of a similar petition by Hershey and noted that CMA's suggested white chocolate standard of identity is generally consistent with that in the Hershey petition. CMA further noted that while its suggested standard is generally based on FDA standards of identity for cacao products, the specific minimum levels of cacao fat, milkfat, and total milk solids are based on those found in the European Union (EU) white chocolate standard published in the *Official Journal of European Communities.*

CMA explained that although antioxidants are not permitted in cacao products under the current standards of identity for these foods, they are needed in the proposed white chocolate standard. CMA maintained that in making white chocolate, cocoa butter is typically deodorized to achieve the desired flavor. In the process, the natural antioxidants are removed. Therefore, CMA contended, the addition of antioxidants to white chocolate is necessary to preserve the product flavor.

CMA suggested that because Canada is proposing a standard for white chocolate that is also based on the EU standard, adoption of its proposed standard would increase harmonization of U.S. requirements with those of Canada. Such harmonization, CMA maintained, is consistent with the goals of the North American Free Trade Agreement.

III. The Proposal

Both petitioners agree that a standard of identity for white chocolate would promote honesty and fair dealing in the interests of consumers, eliminate a deterrent to firms introducing new products, enhance international marketability of the product, and be consistent with the white chocolate standard of the EU and that proposed by Canada.

The agency finds merit in the petitioners' request and tentatively concludes that creating a standard of identity for white chocolate would promote honesty and fair dealing in the interests of consumers because the standard would eliminate the potential for economic fraud and consumer deception through the substitution of cheaper ingredients for cacao-derived ingredients.

Establishing a standard of identity for white chocolate will alleviate the need for companies to request TMP's to market products bearing the name ''white chocolate'' that deviate from the standards of identity for other chocolate products or, in lieu of requesting a TMP, crafting identity statements using descriptive names other than ''chocolate.'' A standard also will enhance international marketability of the product and increase harmonization with the EU and Canada.

While the agency tentatively agrees with the petitioners that a standard for white chocolate should be established, it notes that it is reviewing its existing standards of identity in response to the Administration's Regulatory Reinvention Initiative that seeks to streamline Government to ease the burden on regulated industry and consumers. In the Federal Register of December 29, 1995 (60 FR 67492), FDA published an advance notice of proposed rulemaking (ANPRM) in which it requested comments on whether food standards of identity should be retained, revised, or revoked. In the ANPRM, the agency specifically asked for comments on whether, if it institutes a broad rulemaking on reinventing food standards, it is appropriate in the interim to have a moratorium on food standard actions, i.e., on the issuance of TMP's and on the development of new or revised food standard regulations. Several comments submitted by industry to the ANPRM opposed a moratorium on the creation of new standards of identity while the agency is reviewing existing food standards in response to the Regulatory Reinvention Initiative. The comments asserted that a moratorium would disadvantage firms by delaying the introduction of new products and would not be in the consumer's best interest.

Although FDA is reviewing existing food standards in response to the Regulatory Reinvention Initiative, the agency tentatively concludes that there are compelling reasons to establish a standard for white chocolate at this time. First, the number of requests for TMP's for white chocolate has demonstrated to the agency that there is a consumer demand for this product. As discussed in section I. of this document, the agency has granted TMP's for the market testing of up to 166 million lb of product containing white chocolate. Second, the establishment of a standard for white chocolate seemingly will benefit industry by making it easier to introduce new products containing white chocolate. It will eliminate the need for firms to obtain a TMP to market the products and to send labels to the agency for review whenever they wish to market a new product containing white chocolate or a different size product than those allowed by their TMP. Third, as stated above, the establishment of the standard will benefit U.S. firms by enhancing the international marketability of their product. Finally, the adoption of a standard will ease FDA's burden because it will end the flow of paper from firms seeking, or operating under a TMP. Thus, the agency tentatively concludes that establishing a standard of identity for white chocolate will be beneficial to consumers and to industry and will also result in more efficient use of the agency's limited resources.

However, FDA advises that if a standard of identity for white chocolate is established, the agency will review it along with all other standards of identity as part of the Regulation Reinvention Initiative. The standard of identity for white chocolate would be retained, revised, or revoked consistent with decisions regarding other standards of identity for cacao products.

The proposed standard of identity for white chocolate is slightly different from the standards of identity for other chocolate products in part 163. As described in the 1993 CMA petition, safe and suitable antioxidants are needed to help preserve the product's flavor. The agency has no information that shows that the addition of safe and suitable antioxidants to this product should be prohibited. Therefore, FDA is proposing to provide for the use of antioxidants in proposed § 163.124(b)(5).

FDA tentatively concludes that it is reasonable to establish the term ''white chocolate'' as the common or usual name for the standardized food described below. The public has become familiar with the term ''white chocolate'' through the recent market testing of products that consist, in whole or in part, of this food. The agency further tentatively concludes that use of this term will aid consumer recognition of the food and will promote honesty and fair dealing in the interest of consumers by eliminating the potential for economic fraud and consumer deception through the substitution of cheaper ingredients for cacao-derived ingredients. Finally, the agency tentatively concludes that the consumer confusion engendered by the use of alternative names for white chocolate-type confections will also be eliminated, and that the use of the standardized term ''white chocolate'' in the product name will enhance the international marketability of such products.

Therefore, the agency is proposing to revise part 163 by establishing a standard of identity for white chocolate in new § 163.124. Specifically, FDA is proposing to provide that ''white chocolate'' have the following description:

1. White chocolate is the solid or semiplastic food prepared by intimately mixing and grinding cacao fat with one or more of the optional dairy ingredients and one or more optional nutritive carbohydrate sweeteners and may contain one or more of the other optional ingredients specified in the standard. White chocolate shall be free of coloring material.

2. White chocolate shall contain not less than 20 percent by weight of cacao fat, not less than 3.5 percent by weight of milkfat, not less than 14 percent by weight of total milk solids, and not more than 55 percent by weight nutritive carbohydrate sweetener.

3. White chocolate may contain the following optional ingredients:

a. Nutritive carbohydrate sweeteners;

b. Dairy ingredients:

i. Cream, milkfat, butter;

ii. Milk, dry whole milk, concentrated milk, evaporated milk, sweetened condensed milk;

iii. Skim milk, concentrated skim milk, evaporated skim milk, sweetened condensed skim milk, nonfat dry milk;

iv. Concentrated buttermilk, dried buttermilk; and

v. Malted milk;

c. Emulsifying agents, used singly or in combination, the total amount of which does not exceed 1 percent by weight;

d. Spices, natural and artificial flavorings, ground whole nut meats, ground coffee, dried malted cereal extract, salt, and other seasonings that do not either singly or in combination impart a flavor that imitates the flavor of chocolate, milk, or butter; or

e. Antioxidants.

IV. Effective Date

To allow companies time to make any mandatory changes, the agency proposes that any final rule that may be issued based on this proposal become effective January 1, 1998. The final rule would apply to affected products initially introduced or initially delivered for introduction into interstate commerce on or after the effective date.

V. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select the regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million, adversely affecting in a material way a sector of the economy, competition, or jobs, or raising novel legal or policy issues. If a rule has a significant impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze options that would minimize the economic impact of that rule on small entities. FDA finds that this proposed rule is not a significant rule as defined by Executive Order 12866. The agency acknowledges that under some circumstances this proposed rule may have significant impact on a substantial number of small entities. It has been determined that this rule is not a major rule for the purpose of congressional review (Pub. L. 104–121).

A. Alternatives

FDA is proposing to establish a standard of identity for white chocolate so that only products meeting the criteria described in the proposal may be called ''white chocolate.'' One alternative is to not establish a standard and allow manufacturers to market products bearing the name ''white chocolate'' only with TMP's. Another alternative is to establish a standard for white chocolate that is consistent with the standard described in the petitions where the levels of the ingredients are prescribed. A third alternative is to establish a standard of identity for white

chocolate with different criteria than those proposed in the petitions. While the agency has no explicit information on the exact formulations or attributes that consumers associate with the term ''white chocolate,'' the agency has written the proposed standard of identity to be as consistent as possible with the existing standards of identity for chocolate products while making the necessary allowances to accommodate the formulations described in the petitions. FDA requests comments on these and other alternatives to the proposed standard of identity.

B. Benefits

The largest benefit of this proposed standard of identity for white chocolate is that it will eliminate a manufacturer's need to prepare and submit requests for TMP's in order to market products bearing the name ''white chocolate.'' Another benefit is that it would eliminate the need to divert scarce agency resources to the evaluation of these TMP requests. Currently, manufacturers are required to obtain TMP's to use the term ''chocolate'' to market products that meet the proposed standard because they deviate from the existing standards of identity for chocolate products. The agency has received more than 1 dozen requests for TMP's for white chocolate in the last year. The establishment of the proposed standard of identity would save hours of manufacturer and FDA time required for the preparation and evaluation of each TMP.

Additionally, the benefits usually attributed to the establishment of standards of identity are reductions in the potential for consumer confusion and deception. Well defined standards of identity, which establish consistent product names, can assist consumers in finding and comparing products by the name of the food. Finally, the proposed standard will establish a new product name that, according to the petitions, is consistent with the name that a majority of consumers are already using to describe this product.

C. Costs

The establishment of a standard of identity requires that all products that meet the standard bear the standardized name. If there are products that are formulated in accordance with the proposed standard but are not currently marketed under a TMP allowing use of the term ''white chocolate,'' then those products will have to be relabeled. Because ''white chocolate'' will need to appear on each product's principal display panel, the cost for label changes will depend on the number of products needing to be relabeled and the amount of time manufacturers are given to complete the label changes. The actual cost of relabeling will be determined largely by the length of time between the date that the proposed rule becomes final and the effective date of the final rule (the compliance period). In general, the large chocolate manufacturers are already marketing their products under TMP's. For small firms the cost of relabeling ranges from $12,750 with a 6-month compliance period to $1,550 with a 24-month compliance period. The agency has no information on the number of products that will need to be relabeled. There are approximately 250 firms that produce chocolate products in the United States, however, the number of products that meet the proposed standard of identity is unknown. This proposal will not affect products that do not meet the standard, because they may continue to be produced and marketed as they currently are. FDA is not able to estimate the total cost of this proposal and requests that comments supply information on this issue.

D. Initial Regulatory Flexibility Analysis

If finalized, this proposed rule will establish a standard of identity for white chocolate. Depending upon the length of the compliance period, this proposal may or may not impose significant compliance costs on industry and there may or may not be a significant impact of these provisions on a substantial number of small businesses. However, because there is some uncertainty related to the costs of compliance, FDA is voluntarily doing this Initial Regulatory Flexibility Analysis. The agency requests comment on this judgment.

FDA believes that the only provision of this proposed rule that may have a significant impact on a substantial number of small businesses is related to the compliance period. There are approximately 250 firms that produce chocolate products (Standard Industry Classification Code 206603) in the United States. Almost all of these businesses have fewer than 500 employees. The agency has no data on the number of products that will meet the proposed standard and that, therefore, may need to be relabeled. The relabeling costs are the primary costs of the rule. Relabeling costs vary inversely to the length of the compliance period. FDA has estimated the compliance costs based on three alternatives for the length of the compliance period.

With a 6-month compliance period the costs to small firms that produce one product that would meet the proposed standard are estimated to be $12,750 ($3,400 for administrative costs, $3,200 for printing costs, and $6,150 for costs of lost label inventory). With a 12-month compliance period the costs to small firms that produce one product that would meet the proposed standard are estimated to be $3,300 ($1,700 for administrative costs, $1,100 for printing costs, and $500 for costs of lost label inventory). With a 24-month compliance period the costs to small firms that produce one product that would meet the proposed standard are estimated to be $1,550 ($850 for administrative costs, $700 for printing costs, and nothing for costs of lost label inventory). The agency requests comments on the impact of the compliance period on small chocolate producers and suggestions for minimizing the impact of this proposed rule on small businesses.

VI. Environmental Impact

The agency has determined under 21 CFR 25.24(b)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. Paperwork Reduction Act

FDA tentatively concludes that this proposed rule contains no reporting, recordkeeping, labeling, or other third party disclosure requirements. Thus, there is no ''information collection'' necessitating clearance by the Office of Management and Budget. However, to ensure the accuracy of this tentative conclusion, FDA is asking for comment on whether this proposed rule imposes any paperwork burden.

VIII. Comments

Interested persons may, on or before May 27, 1997, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 163

Cacao products, Food grades and standards.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to

the Director, Center for Food Safety and Applied Nutrition, it is proposed that 21 CFR part 163 be amended as follows:

PART 163—CACAO PRODUCTS

1. The authority citation for 21 CFR part 163 continues to read as follows:

Authority: Secs. 201, 301, 401, 403, 409, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 341, 343, 348, 371, 379e).

2. New § 163.124 is added to subpart B to read as follows:

§ 163.124 White chocolate.

(a) *Description.* (1) White chocolate is the solid or semiplastic food prepared by intimately mixing and grinding cacao fat with one or more of the optional dairy ingredients and one or more optional nutritive carbohydrate sweeteners and may contain one or more of the other optional ingredients specified in paragraph (b) of this section. White chocolate shall be free of coloring material.

(2) White chocolate contains not less than 20 percent by weight of cacao fat as calculated by subtracting from the weight of the total fat the weight of the milkfat, dividing the result by the weight of the finished white chocolate, and multiplying the quotient by 100. The finished white chocolate contains not less than 3.5 percent by weight of milkfat and not less than 14 percent by weight of total milk solids, calculated by using only those dairy ingredients specified in paragraph (b)(2) of this section, and not more than 55 percent by weight nutritive carbohydrate sweetener.

(b) *Optional ingredients.* The following safe and suitable ingredients may be used:

(1) Nutritive carbohydrate sweeteners;

(2) Dairy ingredients:

(i) Cream, milkfat, butter;

(ii) Milk, dry whole milk, concentrated milk, evaporated milk, sweetened condensed milk;

(iii) Skim milk, concentrated skim milk, evaporated skim milk, sweetened condensed skim milk, nonfat dry milk;

(iv) Concentrated buttermilk, dried buttermilk; and

(v) Malted milk;

(3) Emulsifying agents, used singly or in combination, the total amount of which does not exceed 1 percent by weight;

(4) Spices, natural and artificial flavorings, ground whole nut meats, ground coffee, dried malted cereal extract, salt, and other seasonings that do not either singly or in combination impart a flavor that imitates the flavor of chocolate, milk, or butter; or

(5) Antioxidants.

(c) *Nomenclature.* The name of the food is ''white chocolate'' or ''white chocolate coating.'' When one or more of the spices, flavorings, or seasonings specified in paragraph (b)(4) of this section are used, the label shall bear an appropriate statement, e.g., ''Spice added'', ''Flavored with _____'', or ''With _____ added'', the blank being filled in with the common or usual name of the spice, flavoring, or seasoning used, in accordance with § 101.22 of this chapter.

(d) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

Dated: January 6, 1997.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 97–5734 Filed 3–7–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 982

[Docket No. FR–4149–P–01]

RIN 2577–AB73

Section 8 Rental Voucher and Certificate Programs Restrictions on Leasing to Relatives

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would limit the circumstances under which a landlord could lease a unit with Section 8 certificate or voucher assistance to a relative of the landlord. It would permit such leasing only if an HA determines that the leasing would accommodate a person with disabilities. The rule is intended to reduce the potential for misuse of Section 8 assistance. It would reduce the likelihood of families that have the ability to assist a family member from seeking Federal rental assistance and, thereby, would help to direct scarce Federal financial assistance to the more needy.

DATES: Comment due date: May 9, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Office of the General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Comments should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m. Eastern time) at the above address.

FOR FURTHER INFORMATION CONTACT: Gerald Benoit, Director, Operations Division, Office of Rental Assistance, Public and Indian Housing, Department of Housing and Urban Development, Room 4220, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–0477. Hearing or speech impaired individuals may call HUD's TTY number (202) 708–4594 or 1–800–877–8399 (Federal Information Relay Service TTY). (Other than the ''800'' number, these are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Discussion

Currently, neither the statute nor HUD regulations place any restriction on an owner leasing a unit with Section 8 certificate or voucher assistance to a relative. All parties, of course, would have to meet requirements generally applicable to any certificate or voucher assisted tenancy. These requirements include: the applicant meets income and other eligibility requirements; the applicant is selected in appropriate order from the HA's waiting list; the unit meets housing quality standards, and the rent to the owner is reasonable.

This policy of no restrictions on leasing with assistance to relatives has been in effect since the inception of the Certificate Program in the mid-1970s. Historically, it has been viewed by the Department as consistent with an over-arching policy of promoting maximum housing choice for assisted families.

The Department does not have systematic data on the extent to which, or the circumstances under which, owners have been leasing to family members. Nonetheless, it must be recognized that a policy of allowing leasing between closely related individuals creates a potential for misallocation of scarce program resources. It can encourage families that can house family members to seek and obtain Federal assistance that otherwise would be available for more needy families. In short, it can shift, too readily, responsibility for housing a close relative from a relative with available housing or financial resources to the Federal Government.

Recent newspaper articles have described a number of examples of relatives leasing to other relatives with

Section 8 assistance. The Department's review of these cases did not disclose any violation of program requirements. In a number of the examples the total rent received by an owner, from the assisted tenant and the HUD subsidy, was lower than rent the owner previously charged for the unit. In addition, a number of examples involved seriously ill close family members. Other examples, however, did appear to involve owners who should have had the financial ability to assist a close family member, but were nonetheless receiving Section 8 assistance payments.

Section 982.306 of title 24 CFR sets out the restrictions on a housing agency (HA) approving a unit based on facts concerning the owner. The Department proposes to amend § 982.306 so that an HA may not approve a unit for lease if the owner is the parent, child, grandparent, grandchild, sister, or brother of the certificate or voucher holder that is seeking to rent the unit. (Under § 982.306(e), ''owner'' includes a principal or other interested party.) The HA, however, could still approve the unit for lease, if the HA determines that approving the unit would provide reasonable accommodation for a family member who is a person with disabilities. The Department specifically invites comments on whether there should be other exceptions to the general policy.

When implemented, the policy would apply to new admissions and to moves with continued assistance. HUD would add to HAP contract forms a simple certification by the owner that the owner is not a parent, child, grandparent, grandchild, sister, or brother of any member of the family. HUD would also add a comparable certification to the rental certificate and rental voucher.

II. Findings and Certifications

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

Regulatory Planning and Review

This proposed rule has been reviewed in accordance with Executive Order 12866, issued by the President on September 30, 1993 (58 FR 51735, October 4, 1993). Any changes to the proposed rule resulting from this review are available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

Regulatory Flexibility Act

The Secretary has reviewed this proposed rule before publication and by approving it certifies, in accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), that this proposed rule does not have a significant economic impact on a substantial number of small entities because it simply restricts leasing with assistance between certain related individuals and does not otherwise restrict or impose burdens on the use or availability of Section 8 rental certificate or rental voucher assistance.

Unfunded Mandates Reform Act

The Secretary has reviewed this proposed rule before publication and by approving it certifies, in accordance with the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532), that this proposed rule does not impose a Federal mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this proposed rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. The proposed rule does not alter the relationship between HUD and the HAs. Rather, it simply amends one of the conditions for receipt of Federal assistance.

Family Impact

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this proposed rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. This proposed rule furthers the purposes of the Executive Order by revising program requirements to recognize the primary right and responsibility of families themselves to assist needy family members and by increasing the likelihood that Federal assistance is limited to those circumstances where it is most needed.

Catalog

The Catalog of Federal Domestic Assistance numbers are 14.855 and 14.857.

List of Subjects in 24 CFR Part 982

Grant programs—housing and community development, Housing, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, 24 CFR part 982 is proposed to be amended as follows:

PART 982—SECTION 8 TENANT-BASED ASSISTANCE: UNIFIED RULE FOR TENANT-BASED ASSISTANCE UNDER THE SECTION 8 RENTAL CERTIFICATE PROGRAM AND THE SECTION 8 RENTAL VOUCHER PROGRAM

1. The authority citation for part 982 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d).

2. In § 982.306, paragraphs (d) and (e) are redesignated as paragraphs (e) and (f) and a new paragraph (d) is added to read as follows:

§ 982.306 HA disapproval of owner.

* * * * *

(d) The HA must not approve a unit if the owner is the parent, child, grandparent, grandchild, sister, or brother of any member of the family, unless the HA determines that approving the unit would provide reasonable accommodation for a family member who is a person with disabilities.

* * * * *

Dated: December 24, 1996.

Kevin Emanuel Marchman,

Acting Assistant Secretary for Public and Indian Housing.

[FR Doc. 97–5737 Filed 3–7–97; 8:45 am]

BILLING CODE 4210–33–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1625

Waiver of Rights and Claims Under the Age Discrimination in Employment Act (ADEA)

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: EEOC is publishing its notice of proposed rulemaking on agreements waiving rights and claims under the Age

Discrimination in Employment Act, in order to set forth procedures for complying with the Older Workers Benefit Protection Act of 1990.

DATES: To be assured of consideration by EEOC, comments must be in writing and must be received on or before May 9, 1997.

ADDRESS: Written comments should be submitted to Frances M. Hart, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 1801 L Street, NW, Washington, DC 20507.

FOR FURTHER INFORMATION CONTACT: Joseph N. Cleary, Assistant Legal Counsel, or Paul E. Boymel, Senior Attorney-Advisor, ADEA Division, Office of Legal Counsel, 202–663–4692 (voice), 202–663–7026 (TDD).

SUPPLEMENTARY INFORMATION:

A. History

Congress amended the ADEA by enacting the Older Workers Benefit Protection Act of 1990 (OWBPA), Pub. L. No. 101–433, 104 Stat. 983 (1990), to clarify the prohibitions against discrimination on the basis of age. In Title II of OWBPA, Congress addressed waivers of rights and claims under the ADEA, amending section 7 of the ADEA by adding a new subsection (f), 29 U.S.C. sec. 626(f).

Section 7(f)(1) provides that ''an individual may not waive any right or claim under the [ADEA] unless the waiver is knowing and voluntary.'' Section 7(f) sets out the minimum criteria for determining whether a waiver is knowing and voluntary.

In light of the OWBPA amendments, EEOC published an Advance Notice of Proposed Rulemaking (ANPRM) in the Federal Register, 57 FR 10626 (March 27, 1992), seeking information from the public on various issues under both titles of OWBPA. In response to the ANPRM, EEOC received approximately 40 comments, many of which presented detailed analyses of Title II issues, requesting EEOC to provide formal guidance on waivers of rights and claims under the ADEA. Since the publication of the ANPRM, EEOC also has received numerous written and telephone inquiries requesting information on how to comply with Title II.

On August 31, 1995, EEOC announced in the Federal Register, 60 FR 45388 (August 31, 1995), its intent to use negotiated rulemaking to develop a proposed Title II rule.

B. Purpose of Negotiated Rulemaking

Negotiated rulemaking, under procedures set out in the Negotiated Rulemaking Act, 5 U.S.C. 561 *et seq.*, Pub. L. 101–648, is a relatively new tool used by agencies in connection with the development of regulations. In using negotiated rulemaking, EEOC has reached out to employers, employees, and their representatives to take into account the concerns of all interested communities in the development and drafting of the proposed rule. This procedure contrasts with the more traditional ''notice and comment'' rulemaking where an agency receives public input only after the proposed rule is published for comment. The advantages of negotiated rulemaking include:

1. The negotiated rulemaking process allows public input from the start, permitting the stakeholders—individuals, organizations, and businesses actually affected by the rule—to explain their concerns and help shape the rule;

2. The agency gains the benefit of the expertise of the stakeholders, enabling it to draft a rule that reflects the realities of the workplace, not just the agency's views;

3. The negotiated rulemaking process requires consensus of the committee members. By involving stakeholders from all sides of the issues to be addressed, the stakeholders will be more willing to accept the regulation without legal challenge. While no stakeholder will be happy with every provision of a rule, each will know that the rule represents a reasonable solution to shared problems.

C. Negotiated Rulemaking on Title II of OWBPA

The August 31, 1995 Federal Register notice set out nine issues that EEOC suggested might be discussed during the negotiated rulemaking process. EEOC left open the possibility that the Negotiated Rulemaking Committee would add other issues to the proposed rule and/or choose not to address one or more of the enumerated issues.

The notice also invited members of the public who were interested in serving on the Committee to inform EEOC of their interest and qualifications. EEOC received over 70 requests to participate on the Committee, representing a wide diversity of interests and backgrounds. EEOC chose 18 Committee participants from members of the public representing labor, management, and employee interests, along with 2 EEOC representatives to serve on the Committee. The members of the Committee were:

Elizabeth M. Barry, Esq., Harvard University, Cambridge, MA
William H. Brown, Esq., Schnader, Harrison, Segal & Lewis, Philadelphia, PA
Joseph N. Cleary, Esq., Equal Employment Opportunity Commission, Washington, DC
John C. Dempsey, Esq., AFSCME, AFL–CIO, Washington, DC
Raymond C. Fay, Esq., Bell Boyd & Lloyd, Washington, DC
Burton D. Fretz, Esq., National Senior Citizens Law Center, Washington, DC
Peter Kilgore, Esq., National Restaurant Association, Washington, DC
Lloyd C. Loomis, Esq., Atlantic Richfield Co., Los Angeles, CA
Benton J. Mathis, Esq., Drew, Eckl & Farnham, Atlanta, GA
Thomas R. Meites, Esq., Meites, Frackman, Mulder & Burger, Chicago, IL
Niall A. Paul, Esq., Spilman, Thomas & Battle, Charleston, WV
Markus L. Penzel, Esq., Garrison, Phelan, Levin-Epstein & Penzel, and National Employment Lawyers Assn. New Haven, CT
L. Steven Platt, Esq., Arnold and Kadjan, and National Employment Lawyers Assn., Chicago, IL
Pamela S. Poff, Esq., Paine Webber Inc., Weehawken, NJ
Michele C. Pollak, Esq., American Association of Retired Persons, Washington, DC
Jaime Ramon, Esq., Jackson Walker, Dallas, TX
Patrick W. Shea, Esq., Paul Hastings, Janofsky & Walker, Society for Human Resource Management, Stamford, CT
Paul H. Tobias, Esq., Tobias Kraus & Torchia, Cincinnati, OH
Ellen J. Vargyas, Esq., Equal Employment Opportunity Commission, Washington, DC
Robert Williams, Esq., McGuiness & Williams, Equal Employment Advisory Council, Washington, DC

The Negotiated Rulemaking Committee began work on December 6, 1995. Committee meetings were held on December 6–7, 1995, January 23–24, 1996, March 6–7, 1996, April 16–17, 1996, June 18–19, 1996, and July 23–24, 1996. The Committee discussed in detail the issues set out in the August 31, 1995, Federal Register notice, as well as other issues that the Committee considered needed to be resolved. The Committee functioned by consensus which it defined as the absence of objection by any Committee member.

The Committee unanimously forwarded a recommended proposed rule to EEOC for its consideration. As a result of the recommendations received from the Committee, and its deliberations regarding such

recommendations, EEOC is publishing for public comment the Committee's negotiated rule in this Notice of Proposed Rulemaking.

Because the recommendation was based on a consensus of the Committee members, it did not include issues on which the Committee could not reach a consensus. EEOC recognizes that this Notice of Proposed Rulemaking does not address certain issues that arise under Title II of OWBPA. EEOC emphasizes that no inference should be drawn on any issue by reason of the proposed regulation's silence with respect to that issue.

Following the end of the 60 day comment period, members of the Negotiated Rulemaking Committee will be given a period of 30 days to provide EEOC with their written views relating to the proposed rule and the comments received. At the expiration of that 30 day period, EEOC will review all comments and determine the content of the final regulation.

As a convenience to commentors, the Executive Secretariat will accept public comments transmitted by facsimile (''FAX'') machine. The telephone number of the FAX receiver is 202–663–4114. (Telephone numbers published in this Notice are not toll-free). Only public comments of six or fewer pages will be accepted via FAX transmittal. This limitation is necessary in order to assure access to the equipment. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff on 202–663–4078.

Comments received will be available for public inspection in the EEOC Library, Room 6502, 1801 L Street, NW, Washington, DC 20507, by appointment only, from 9:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays. Persons who need assistance to review the comments will be provided with appropriate aids such as readers or print magnifiers. Copies of this notice of proposed rulemaking are available in the following alternative formats: Large print, braille, electronic file on computer disk, and audio-tape. To schedule an appointment or receive a copy of the notice in an alternative format, call 202 663–4630 (voice), 202–663–4399 (TDD).

Executive Order 12866, Regulatory Planning and Review

Under section 3(f)(4) of Executive Order 12866, EEOC has determined that this regulation would be a ''significant regulatory action;'' therefore, EEOC has coordinated this NPRM with the Office of Management and Budget. However, under section 3(f)(1) of Executive Order 12866, EEOC has determined that the regulation will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State or local or tribal governments or communities. The rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. Therefore, EEOC has not needed to prepare a detailed cost-benefit assessment of the regulation.

Paperwork Reduction Act

The rule as proposed does not require the collection of information by EEOC or by any other agency of the United States Government. However, the provisions of Title II of OWBPA do require employers to provide certain information to employees (but not to EEOC) in writing.

Accordingly, EEOC, as part of its continuing effort to reduce paperwork and respondent burden, is, as required by the Paperwork Reduction Act for all collections of information, soliciting comments concerning the proposed rule with regard to the paperwork requirements contained in Title II of OWBPA. The provisions of the proposed rule dealing with informational requirements have been submitted to the Office of Management and Budget for review under section 3507 of the Paperwork Reduction Act.

The public reporting and recordkeeping burden for this collection of information is estimated to be 41,139 hours in order for employers to collect the information and to determine: (1) what information must be given to employees; (2) which employees must be given the information; (3) how the information should be organized.

The estimated burden of collecting and distributing the information was calculated as follows:

Collection Title: Informational requirements under Title II of the Older Workers Benefit Protection Act of 1990 (OWBPA), 29 CFR Part 1625.

Form Number: None.

Frequency of Report: None required.

Type of Respondent: Business, state or local governments, not for profit institutions.

Description of the Affected Public: Any employer with 20 or more employees that seeks waiver agreements in connection with exit incentive or other employment termination programs (hereinafter, ''Programs'').

Responses: 13,713.

Reporting Hours: 41,139.

Number of Forms: None.

Abstract: This requirement does not involve record keeping. It consists of providing adequate information in waiver agreements offered to a group or class of persons in connection with a Program, to satisfy the requirements of the OWBPA.

Burden Statement: There is no reporting requirement nor additional record keeping associated with this rule. The only paperwork burden involved is the inclusion of the relevant data in waiver agreements. The rule applies only to those employers who have 20 or more employees and who offer waivers to a group or class of employees in connection with a Program.

There are 542,000 employers who have at least 20 employees. Programs come into play when, as a result of business activity, employers are forced to cut their work force. Based on statistics from EEOC's private employer survey, it is estimated that in any one year 4.6% of employers are involved in activities, such as mergers or downsizing, which occasion the use of Programs. It is further estimated, based on figures from a General Accounting Office study, and the Bureau of Labor Statistics, that at most 55% of those who use Programs require waivers and thus are affected by this rule.

Applying the above factors to the total number of employers: [(542,000×.046×.55)=13,713] yields 13,713 employers that are affected by this requirement. The larger employers are assumed to have computerized record keeping, and thus can produce the requisite notification with a minimum of effort, while smaller employers have far less information to process.

Therefore, it is estimated that, on the average, a notification can be produced in approximately 3 hours. This would then produce a maximum of (13,713×3)=41,139 hours annually.

Organizations and individuals desiring to submit comments on the information collection requirements should submit written comments on or before April 9, 1997. This deadline does not affect the deadline for the public to comment to EEOC on the proposed regulation itself. Address comments to: Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, D.C. 20503, Attention: Desk Officer for the United States Equal Employment Opportunity Commission. Comments also should be sent to EEOC at the address listed at the beginning of this Notice.

EEOC will consider comments by the public on this proposed regulation to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of EEOC, including whether the information shall have practical utility;
- Evaluate the accuracy of EEOC's estimate of the burden of the proposed collection of information;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

EEOC certifies under 5 U.S.C. 605(b), enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this regulation will not result in a significant economic impact on a substantial number of small entities. For this reason, a regulatory flexibility analysis is not required. A copy of this proposed rule was furnished to the Small Business Administration.

In addition, in accordance with Executive Order 12067, EEOC has solicited the views of affected Federal agencies.

List of Subjects in 29 CFR Part 1625

Advertising, Age, Employee benefit plans, Equal employment opportunity, Retirement.

Signed at Washington, DC this 4th day of March, 1997.

Gilbert F. Casellas,

Chairman.

It is proposed to amend chapter XIV of title 29 of the Code of Federal Regulations as follows:

PART 1625—AGE DISCRIMINATION IN EMPLOYMENT ACT

1. The authority citation for part 1625 continues to read as follows:

Authority: 81 Stat. 602; 29 U.S.C. 621, 5 U.S.C. 301, Secretary's Order No. 10–68; Secretary's Order No. 11–68; sec. 12, 29 U.S.C. 631, Pub. L. 99–592, 100 Stat. 3342; sec. 2, Reorg. Plan No. 1 of 1978, 43 FR 19807.

2. In part 1625, § 1625.22 would be added to Subpart B—Substantive Regulations to read as follows:

§ 1625.22 Waivers of rights and claims under the ADEA.

(a) *Introduction.* (1) Congress amended the ADEA in 1990 to clarify the prohibitions against discrimination on the basis of age. In Title II of OWBPA, Congress addressed waivers of rights and claims under the ADEA, amending section 7 of the ADEA by adding a new subsection (f).

(2) Section 7(f)(1) of the ADEA expressly provides that waivers may be valid and enforceable under the ADEA only if the waiver is ''knowing and voluntary''. Sections 7(f) (1) and 7(f) (2) of the ADEA set out the minimum requirements for determining whether a waiver is knowing and voluntary.

(3) Other facts and circumstances may bear on the question of whether the waiver is knowing and voluntary, as, for example, if there is a material mistake, omission, or misstatement in the information furnished by the employer to an employee in connection with the waiver.

(b) *Wording of waiver agreements.* (1) Section 7(f)(1)(A) of the ADEA provides, as part of the minimum requirements for a knowing and voluntary waiver, that:

> The waiver is part of an agreement between the individual and the employer that is written in a manner calculated to be understood by such individual, or by the average individual eligible to participate.

(2) The entire waiver agreement must be in writing.

(3) Waiver agreements must be drafted in plain language geared to the level of understanding of the individual party to the agreement or individuals eligible to participate. Employers should take into account such factors as the level of comprehension and education of typical participants. Consideration of these factors usually will require the limitation or elimination of technical jargon and of long, complex sentences.

(4) The waiver agreement must not have the effect of misleading, misinforming, or failing to inform participants and affected individuals. Any advantages or disadvantages described shall be presented without either exaggerating the benefits or minimizing the limitations.

(5) Section 7(f)(1)(H) of the ADEA, relating to exit incentive or other employment termination programs offered to a group or class of employees, also contains a requirement that information be conveyed ''in writing in a manner calculated to be understood by the average plan participant.'' The same standards applicable to the similar language in section 7(f)(1)(A) of the ADEA apply here as well.

(6) Section 7(f)(1)(B) of the ADEA provides, as part of the minimum requirements for a knowing and voluntary waiver, that ''the waiver specifically refers to rights or claims under this Act.'' Pursuant to this subsection, the waiver agreement must refer to the Age Discrimination in Employment Act (ADEA) by name in connection with the waiver.

(7) Section 7(f)(1)(E) of the ADEA requires that an individual must be ''advised in writing to consult with an attorney prior to executing the agreement.''

(c) *Waiver of future rights.* (1) Section 7(f)(1)(C) of the ADEA provides that:

> A waiver may not be considered knowing and voluntary unless at a minimum * * * the individual does not waive rights or claims that may arise after the date the waiver is executed.

(2) The waiver of rights or claims that arise following the execution of a waiver is prohibited. However, section 7(f)(1)(C) of the ADEA does not bar, in a waiver that otherwise is consistent with statutory requirements, the enforcement of agreements to perform future employment-related actions such as the employee's agreement to retire or otherwise terminate employment at a future date.

(d) *Consideration.* (1) Section 7(f)(1)(D) of the ADEA states that:

> A waiver may not be considered knowing and voluntary unless at a minimum * * * the individual waives rights or claims only in exchange for consideration in addition to anything of value to which the individual already is entitled.

(2) ''Consideration in addition'' means anything of value in addition to that to which the individual is already entitled in the absence of a waiver.

(3) If a benefit or other thing of value was eliminated in contravention of law or contract, express or implied, the subsequent offer of such benefit or thing of value in connection with a waiver will not constitute ''consideration'' for purposes of section 7(f)(1) of the ADEA. Whether such elimination as to one employee or group of employees is in contravention of law or contract as to other employees, or to that individual employee at some later time, may vary depending on the facts and circumstances of each case.

(4) An employer is not required to give a person age 40 or older a greater amount of consideration than is given to a person under the age of 40, solely because of that person's membership in the protected class under the ADEA.

(e) *Time periods.* (1) Section 7(f)(1)(F) of the ADEA states that:

> A waiver may not be considered knowing and voluntary unless at a minimum * * *
>
> (i) The individual is given a period of at least 21 days within which to consider the agreement; or
>
> (ii) If a waiver is requested in connection with an exit incentive or other employment termination program offered to a group or class of employees, the individual is given a period of at least 45 days within which to consider the agreement.

(2) Section 7(f)(1)(G) of the ADEA states:

> A waiver may not be considered knowing and voluntary unless at a minimum * * * the agreement provides that for a period of at least 7 days following the execution of such agreement, the individual may revoke the agreement, and the agreement shall not become effective or enforceable until the revocation period has expired.

(3) The term ''exit incentive or other employment termination program'' includes both voluntary and involuntary programs.

(4) The 21 or 45 day period runs from the date of the employer's final offer. Material changes to the final offer restart the running of the 21 or 45 day period; changes made to the final offer that are not material do not restart the running of the 21 or 45 day period. The parties may agree that changes, whether material or immaterial, do not restart the running of the 21 or 45 day period.

(5) The 7 day revocation period cannot be shortened by the parties, by agreement or otherwise.

(6) An employee may sign a release prior to the end of the 21 or 45 day time period, thereby commencing the mandatory 7 day revocation period. This is permissible as long as the employee's decision to accept such shortening of time is knowing and voluntary and is not induced by the employer through fraud, misrepresentation, a threat to withdraw or alter the offer prior to the expiration of the 21 or 45 day time period, or by providing different terms to employees who sign the release prior to the expiration of such time period. However, if an employee signs a release before the expiration of the 21 or 45 day time period, the employer may expedite the processing of the consideration provided in exchange for the waiver.

(f) Informational requirements.

(1) Introduction. (i) Section 7(f)(1)(H) of the ADEA provides that:

> A waiver may not be considered knowing and voluntary unless at a minimum * * * if a waiver is requested in connection with an exit incentive or other employment termination program offered to a group or class of employees, the employer (at the commencement of the period specified in subparagraph (F)) [which provides time periods for employees to consider the waiver] informs the individual in writing in a manner calculated to be understood by the average individual eligible to participate, as to—
>
> (i) Any class, unit, or group of individuals covered by such program, any eligibility factors for such program, and any time limits applicable to such program; and
>
> (ii) The job titles and ages of all individuals eligible or selected for the program, and the ages of all individuals in the same job classification or organizational unit who are not eligible or selected for the program.

(ii) Section 7(f)(1)(H) of the ADEA addresses two principal issues: to whom must information be provided, and what information must be disclosed to such individuals.

(iii)(A) Section 7(f)(1)(H) of the ADEA references two types of ''programs'' under which employers seeking waivers must make written disclosures: ''exit incentive programs'' and ''other employment termination programs.'' Usually an ''exit incentive program'' is a voluntary program offered to a group or class of employees where such employees are offered consideration in addition to anything of value to which the individuals are already entitled (hereinafter in this section, ''additional consideration'') in exchange for their decision to resign voluntarily and sign a waiver. Usually ''other employment termination program'' refers to a group or class of employees who were involuntarily terminated and who are offered additional consideration in return for their decision to sign a waiver.

(B) The question of the existence of a ''program'' will be decided based upon the facts and circumstances of each case. A ''program'' exists when an employer offers additional consideration for the signing of a waiver pursuant to an exit incentive or other employment termination (e.g., a reduction in force) to two or more employees. Typically, an involuntary termination program is a standardized formula or package of benefits that is available to two or more employees, while an exit incentive program typically is a standardized formula or package of benefits designed to induce employees to sever their employment voluntarily. In both cases, the terms of the programs generally are not subject to negotiation between the parties.

(C) Regardless of the type of program, the scope of the terms ''class,'' ''unit,'' ''group,'' ''job classification,'' and ''organizational unit'' is determined by examining the ''decisional unit'' at issue. (*See* paragraph (f)(3) of this section, ''The Decisional Unit,'' below).

(D) A ''program'' for purposes of the ADEA need not constitute an ''employee benefit plan'' for purposes of the Employee Retirement Income Security Act of 1974 (ERISA). An employer may or may not have an ERISA severance plan in connection with its OWBPA program.

(iv) The purpose of the informational requirements is to provide an employee with enough information regarding the program to allow the employee to make an informed choice whether or not to sign a waiver agreement.

(2) To whom must the information be given. The required information must be given to each person in the decisional unit who is asked to sign a waiver agreement.

(3) The decisional unit. (i)(A) The terms ''class,'' ''unit,'' or ''group'' in section 7(f)(1)(H)(i) of the ADEA and ''job classification or organizational unit'' in section 7(f)(1)(H)(ii) of the ADEA refer to examples of categories or groupings of employees affected by a program within an employer's particular organizational structure. The terms are not meant to be an exclusive list of characterizations of an employer's organization.

(B) When identifying the scope of the ''class, unit, or group,'' and ''job classification or organizational unit,'' an employer should consider its organizational structure and decision-making process. A ''decisional unit'' is that portion of the employer's organizational structure from which the employer chose the persons who would be offered consideration for the signing of a waiver and those who would not be offered consideration for the signing of a waiver. The term ''decisional unit'' has been developed to reflect the process by which an employer chose certain employees for a program and ruled out others from that program.

(ii)(A) The variety of terms used in section 7(f)(1)(H) of the ADEA demonstrates that employers often use differing terminology to describe their organizational structures. When identifying the population of the decisional unit, the employer acts on a case-by-case basis, and thus the determination of the appropriate class, unit, or group, and job classification or organizational unit for purposes of section 7(f)(1)(H) of the ADEA also must be made on a case-by-case basis.

(B) The examples in paragraph (f)(3)(iii) of this section demonstrate that in appropriate cases some subgroup of a facility's work force may be the decisional unit. In other situations, it may be appropriate for the decisional unit to comprise several facilities. However, as the decisional unit is typically no broader than the facility, in general the disclosure need be no broader than the facility. ''Facility'' as it is used throughout this section generally refers to place or location. However, in some circumstances terms such as ''school,'' ''plant,'' or ''complex'' may be more appropriate.

(C) Often, when utilizing a program an employer is attempting to reduce its workforce at a particular facility in an effort to eliminate what it deems to be excessive overhead, expenses, or costs from its organization at that facility. If

the employer's goal is the reduction of its workforce at a particular facility and that employer undertakes a decision-making process by which certain employees of the facility are selected for a program, and others are not selected for a program, then that facility generally will be the decisional unit for purposes of section 7(f)(1)(H) of the ADEA.

(D) However, if an employer seeks to terminate employees by exclusively considering a particular portion or subgroup of its operations at a specific facility, then that subgroup or portion of the workforce at that facility will be considered the decisional unit.

(E) Likewise, if the employer analyzes its operations at several facilities, specifically considers and compares ages, seniority rosters, or similar factors at differing facilities, and determines to focus its workforce reduction at a particular facility, then by the nature of that employer's decision-making process the decisional unit would include all considered facilities and not just the facility selected for the reductions.

(iii) The following examples are not all-inclusive and are meant only to assist employers and employees in determining the appropriate decisional unit. Involuntary reductions in force typically are structured along one or more of the following lines:

(A) Facility-wide: Ten percent of the employees in the Springfield facility will be terminated within the next ten days;

(B) Division-wide: Fifteen of the employees in the Computer Division will be terminated in December;

(C) Department-wide: One-half of the workers in the Keyboard Department of the Computer Division will be terminated in December;

(D) Reporting: Ten percent of the employees who report to the Vice President for Sales, wherever the employees are located, will be terminated immediately;

(E) Job Category: Ten percent of all accountants, wherever the employees are located, will be terminated next week.

(iv) In the examples in paragraph (f)(3)(iii) of this section, the decisional units are, respectively: (A) the Springfield facility; (B) the Computer Division; (C) the Keyboard Department; (D) all employees reporting to the Vice President for Sales; and (E) all accountants.

(v) While the particular circumstances of each termination program will determine the decisional unit, the following examples also may assist in determining when the decisional unit is other than the entire facility:

(A) A number of small facilities with interrelated functions and employees in a specific geographic area may comprise a single decisional unit;

(B) If a company utilizes personnel for a common function at more than one facility, the decisional unit for that function (i.e., accounting) may be broader than the one facility;

(C) A large facility with several distinct functions may comprise a number of decisional units; for example, if a single facility has distinct internal functions with no employee overlap (i.e., manufacturing, accounting, human resources), and the program is confined to a distinct function, a smaller decisional unit may be appropriate.

(vi)(A) For purposes of this section, higher level review of termination decisions generally will not change the size of the decisional unit unless the reviewing process alters its scope. For example, review by the Human Resources Department to monitor compliance with discrimination laws does not affect the decisional unit. Similarly, when a regional manager in charge of more than one facility reviews the termination decisions regarding one of those facilities, the review does not alter the decisional unit, which remains the one facility under consideration.

(B) However, if the regional manager in the course of review determines that persons in other facilities should also be considered for termination, the decisional unit becomes the population of all facilities considered. Further, if, for example, the regional manager and his three immediate subordinates jointly review the termination decisions, taking into account more than one facility, the decisional unit becomes the populations of all facilities considered.

(vii) This regulatory section is limited to the requirements of section 7(f)(1)(H) and is not intended to affect the scope of discovery or of substantive proceedings in the processing of charges of violation of the ADEA or in litigation involving such charges.

(4) Presentation of information. (i) The information provided must be in writing and must be written in a manner calculated to be understood by the average individual eligible to participate.

(ii) Information regarding ages should be broken down according to the age of each person eligible or selected for the program and each person not eligible or selected for the program. The use of age bands broader than one year (such as ''age 20–30'') does not satisfy this requirement.

(iii) In a termination of persons in several established grade levels and/or other established subcategories within a job category or job title, the information shall be broken down by grade level or other subcategory.

(iv) If an employer in its disclosure combines information concerning both voluntary and involuntary terminations, the employer shall present the information in a manner that distinguishes between voluntary and involuntary terminations.

(v) If the terminees are selected from a subset of a decisional unit, the employer must still disclose information for the entire population of the decisional unit. For example, if the employer decides that a 10% RIF in the Accounting Department will come from the accountants whose performance is in the bottom one-third of the Division, the employer still must disclose information for all employees in the Accounting Department, even those who are the highest rated.

(vi) An involuntary termination program in a decisional unit may take place in successive increments over a period of time. Special rules apply to this situation. Specifically, information supplied with regard to the involuntary termination program should be cumulative, so that later terminees are provided ages and job titles or job categories, as appropriate, for all persons in the decisional unit at the beginning of the program and all persons terminated to date. There is no duty to supplement the information given to earlier terminees so long as the disclosure, at the time it is given, conforms to the requirements of this section.

(vii) The following example demonstrates one way in which the required information could be presented to the employees. (This example is not presented as a prototype notification agreement that automatically will comply with the ADEA. Each information disclosure must be structured based upon the individual case, taking into account the corporate structure, the population of the decisional unit, and the requirements of section 7(f)(1)(H)) of the ADEA:
Example: Y Corporation lost a major construction contract and determined that it must terminate 10% of the employees in the Construction Division. Y decided to offer all terminees $20,000 in severance pay in exchange for a waiver of all rights. The waiver provides the section 7(f)(1)(H) of the ADEA information as follows:

(A) The decisional unit is the Construction Division.

(B) All persons in the Construction Division are eligible for the program. All persons who are being terminated in our November RIF are selected for the program.

(C) All persons who are being offered consideration under a waiver agreement must sign the agreement and return it to the Personnel Office within 45 days after receiving the waiver. Once the signed waiver is returned to the Personnel Office, the employee has 7 days to revoke the waiver agreement.

(D) The following is a listing of the ages and job titles of persons in the Construction Division who were and were not selected for termination and the offer of consideration for signing a waiver:

Job title	Age	Number selected	Number not selected
(1) Mechanical Engineers, I	25	21	48
	26	11	73
* * * * *	*	*	
	63	4	18
	64	3	11
(2) Mechanical Engineers, II	28	3	10
	29	11	17
	(1)		
(3) Structural Engineers, I	21	5	8
	(1)		
(4) Structural Engineers, II	23	2	4
	(1)		
(5) Purchasing Agents	26	10	11
	(1)		

[1] etc., for all ages.

(g) *Waivers settling charges and lawsuits. (1) Section 7(f)(2) of the ADEA provides that:*

A waiver in settlement of a charge filed with the Equal Employment Opportunity Commission, or an action filed in court by the individual or the individual's representative, alleging age discrimination of a kind prohibited under section 4 or 15 may not be considered knowing and voluntary unless at a minimum—

(A) Subparagraphs (A) through (E) of paragraph (1) have been met; and

(B) The individual is given a reasonable period of time within which to consider the settlement agreement.

(2) The language in section 7(f)(2) of the ADEA, ''discrimination of a kind prohibited under section 4 or 15'' refers to allegations of age discrimination of the type prohibited by the ADEA.

(3) The standards set out in section (f) of these regulations for complying with the provisions of section 7(f)(1)(A)-(E) of the ADEA also will apply for purposes of complying with the provisions of section 7(f)(2)(A) of the ADEA.

(4) The term ''reasonable time within which to consider the settlement agreement'' means reasonable under all the circumstances, including whether the individual is represented by counsel or has the assistance of counsel.

(5) However, while the time periods under section 7(f)(1) of the ADEA do not apply to subsection 7(f)(2) of the ADEA, a waiver agreement under this subsection that provides an employee the time periods specified in section 7(f)(1) of the ADEA will be considered ''reasonable'' for purposes of section 7(f)(2)(B) of the ADEA.

(6) A waiver agreement in compliance with this section that is in settlement of an EEOC charge does not require the participation or supervision of EEOC.

(h) *Burden of proof.* In any dispute that may arise over whether any of the requirements, conditions, and circumstances set forth in section 7(f) of the ADEA, subparagraph (A), (B), (C), (D), (E), (F), (G), or (H) of paragraph (1), or subparagraph (A) or (B) of paragraph (2), have been met, the party asserting the validity of a waiver shall have the burden of proving in a court of competent jurisdiction that a waiver was knowing and voluntary pursuant to paragraph (1) or (2) of section 7(f) of the ADEA.

(i) *EEOC's enforcement powers.* (1) Section 7(f)(4) of the ADEA states:

No waiver agreement may affect the Commission's rights and responsibilities to enforce [the ADEA]. No waiver may be used to justify interfering with the protected right of an employee to file a charge or participate in an investigation or proceeding conducted by the Commission.

(2) No waiver agreement may include any provision prohibiting any individual from:

(i) Filing a charge or complaint, including a challenge to the validity of the waiver agreement, with EEOC, or

(ii) Participating in any investigation or proceeding conducted by EEOC.

(3) No waiver agreement may include any provision imposing any condition precedent, any penalty, or any other limitation adversely affecting any individual's right to:

(i) File a charge or complaint, including a challenge to the validity of the waiver agreement, with EEOC, or

(ii) Participate in any investigation or proceeding conducted by EEOC.

(j) *Effective date of this section.* (1) This section is effective [30 days after publication of the final rule in the Federal Register.]

(2) This section applies to waivers offered by employers on or after the effective date specified in paragraph (j)(1) of this section.

(3) No inference is to be drawn from this section regarding the validity of waivers offered prior to the effective date.

(k) *Statutory authority.* The regulations in this section are legislative regulations issued pursuant to section 9 of the ADEA and Title II of OWBPA.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket No. 96–186; FCC 97–49]

Assessment and Collection of Regulatory Fees For Fiscal Year 1997

AGENCY: Federal Communications Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Commission is proposing to revise its Schedule of Regulatory Fees in order to recover the amount of regulatory fees that Congress has required it to collect for fiscal year 1997. Section 9 of the Communications Act of 1934, as amended, provides for the annual assessment and collection of

regulatory fees. For fiscal year 1997 sections 9(b) (2) and (3) provide for annual ''Mandatory Adjustments'' and ''Permitted Amendments'' to the Schedule of Regulatory Fees. These revisions will further the National Performance Review goals of reinventing Government by requiring beneficiaries of Commission services to pay for such services.

DATES: Comments are due on or before March 25, 1997 and Reply Comments are due on or before April 4, 1997.

ADDRESSES; Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Peter W. Herrick, Office of Managing Director at (202) 418–0443, or Terry D. Johnson, Office of Managing Director at (202) 418–0445.

SUPPLEMENTARY INFORMATION: Adopted: February 14, 1997; Released: March 5, 1997.

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I. Introduction

1. By this *Notice of Proposed Rulemaking,* the Commission commences a proceeding to revise its Schedule of Regulatory Fees in order to recover the amount of regulatory fees that Congress, pursuant to Section 9(a) of the Communications Act, as amended, has required it to collect for Fiscal Year (FY) 1997. *See* 47 U.S.C. § 159 (a).

2. Congress has required that we collect $152,523,000 through regulatory fees in order to recover the costs of our enforcement, policy and rulemaking, international and user information activities for FY 1997. Public Law 104–208 and 47 U.S.C. § 159(a)(2). This amount is $26,123,000 or nearly 21% more than the amount that Congress designated for recovery through regulatory fees for FY 1996. *See Assessment and Collection of Regulatory Fees for Fiscal Year 1996,* FCC 96–295, released July 5, 1996, 61 FR 36629 (July 12, 1996). Thus, we are proposing to revise our fees in order to collect the increased amount that Congress has required that we collect. Additionally, we propose to amend the Schedule in order to assess regulatory fees upon licensees and/or regulatees of services not previously subject to payment of a fee, to simplify and streamline the Fee Schedule, and to clarify and/or revise certain payment procedures. 47 U.S.C. § 159(b)(3).

3. In proposing to revise our fees, we adjusted the payment units and revenue requirement for each service subject to a fee, consistent with Sections 159(b)(2) and (3). In addition, we have made changes to the fees pursuant to public interest considerations. The current Schedule of Regulatory Fees is set forth in sections 1.1152 through 1.1156 of the Commission's rules. 47 CFR §§ 1.1152 through 1.1156.

II. Background

4. Section 9(a) of the Communications Act of 1934, as amended, authorizes the Commission to assess and collect annual regulatory fees to recover the costs, as determined annually by Congress, that it incurs in carrying out enforcement, policy and rulemaking, international, and user information activities. 47 U.S.C. 159(a). See Attachment I for a description of feeable activities. In our *FY 1994 Fee Report and Order,* 59 FR 30984 (June 16, 1994), we adopted the Schedule of Regulatory Fees that Congress established and we prescribed rules to govern payment of the fees, as required by Congress. 47 U.S.C. § 159(b), (f)(1). Subsequently, in our *FY 1995 and FY 1996 Fee Reports and Orders,* 60 FR 34004 (June 29, 1995) and 61 FR 36629 (July 12, 1996), we modified the Schedule to increase by approximately 93 percent and 9 percent, respectively, the revenue generated by these fees in accordance with the amounts Congress required us to collect in FY 1995 and FY 1996. Also, in both our *FY 1995 and FY 1996 Fee Reports and Orders,* we amended certain rules governing our regulatory fee program based upon our experience administering the program in prior years. *See* 47 CFR §§ 1.1151 *et seq.*

5. As noted above, for FY 1994 we adopted the Schedule of Regulatory Fees established in Section 9(g) of the Act. For fiscal years after FY 1994, however, Sections 9(b)(2) and (3), respectively, provide for ''Mandatory Adjustments'' and ''Permitted Amendments'' to the Schedule of Regulatory Fees. 47 U.S.C. § 159(b)(2), (b)(3). Section 9(b)(2), entitled ''Mandatory Adjustments,'' requires that we revise the Schedule of Regulatory Fees whenever Congress changes the amount that we are to recover through regulatory fees. 47 U.S.C. § 159(b)(2).

6. Section 9(b)(3), entitled ''Permitted Amendments,'' requires that we determine annually whether adjustments to the fees are warranted based upon the requirements of this subsection and that, whenever we make such adjustments, we take into account factors that are reasonably related to the payer of the fee and factors that are in the public interest. In making these amendments, we are to ''add, delete, or reclassify services in the Schedule to reflect additions, deletions or changes in the nature of its services.'' 47 U.S.C. § 159(b)(3).

7. Section 9(i) requires that we develop accounting systems necessary to adjust our fees pursuant to changes in the costs of regulation of the various services subject to a fee and for other purposes. 47 U.S.C. § 9(i). In this proceeding, we are proposing for the first time to rely on cost accounting data to identify our regulatory costs and to develop our FY 1997 fees based upon these costs. Also, as noted, we are proposing to limit the increase in the amount of the fee for any service in order to phase in our reliance on cost-based fees for those services whose proposed revenue requirement would be more than 25 percent above the revenue requirement which would have resulted from the ''mandatory adjustments'' to the FY 1996 fees without incorporation of costs. The methodology we propose enables us to develop regulatory fees which more closely reflect our costs of regulating a service and also allows us to make annual revisions to our fees based to the fullest extent possible, and consistent with the public interest, on the actual costs of regulating those services subject to a fee. Finally, Section 9(b)(4)(B) requires that we notify Congress of any permitted amendments 90 days before those amendments go into effect. 47 U.S.C. § 159(b)(4)(B).

III. Discussion

A. Summary of FY 1997 Fee Methodology

8. As noted above, Congress has required that the Commission recover $152,523,000 for FY 1997 through the collection of regulatory fees, representing the costs applicable to our enforcement, policy and rulemaking, international, and user information activities. 47 U.S.C. § 159(a). Congress' increase does not fall equally on all payers due to revised payment units and revenue requirement allocations resulting from the cost accounting system.

9. In developing our proposed FY 1997 fee schedule, we first estimated payment units [1] for FY 1997 in order to determine the aggregate amount of revenue we would collect without any revision to our FY 1996 fees. Next, we compared this revenue amount to the $152,523,000 that Congress has required us to collect in FY 1997 and pro-rated the shortfall among all the existing fee categories. We then adjusted the projected revenue requirements so that they equaled the actual costs of each service, using data generated by our cost accounting system, described *infra,* to ensure that revenues equaled our regulatory costs for each fee category.

10. We next examined the impact of using actual costs to establish regulatory fees for each class of regulatees to determine whether any regulatees experienced an unduly large fee increase. We found that, in many cases, cost-based fees result in fee payments dramatically higher in FY 1997 than they were in FY 1996. Therefore, rather than proposing fully cost-based fees for FY 1997, we are proposing to phase in full reliance on cost-based fees and, for FY 1997, to establish a revenue ceiling in each service no higher than 25 percent above the revenue that payers within a fee category would have paid if FY 1997 fees had remained at FY 1996 levels adjusted only for changes in volume and the increase required by Congress. Our proposed methodology would reduce fees for services whose regulatory costs have declined while increasing fees for services experiencing higher regulatory costs in order to begin eliminating disparities disclosed by our cost accounting system between a service's current costs and fees ascribed to these services in prior fiscal years.

11. Once we established our tentative FY 1997 fees, we evaluated various proposals made by Commission staff concerning other adjustments to the Fee Schedule and to our collection procedures. The proposals are discussed in Paragraphs 20–40 and are factored into our proposed FY 1997 Schedule of Regulatory Fees, set forth in Attachment F.

12. Finally, we have incorporated, as Attachment H, proposed Guidance containing detailed descriptions of each fee category, information on the individual or entity responsible for paying a particular fee and other critical information designed to assist potential fee payers in determining the extent of their fee liability, if any, for FY 1997.[2] In the following paragraphs, we describe in greater detail our methodology for establishing our FY 1997 regulatory fees.

B. Development of FY 1997 Fees

1. Adjustment of Payment Units

13. As the first step in calculating individual service regulatory fees for FY 1997, we adjusted the estimated payment units for each service because payment units for many services have changed substantially since we adopted our FY 1996 fees. We obtained our estimated payment units through a variety of means, including our licensee data bases, actual prior year payment records, and industry and trade group projections. Whenever possible, we verified these estimates from multiple sources to ensure the accuracy of these estimates. Attachment B provides a summary of how revised payment units were determined for each fee category.[3]

2. Calculation of Revenue Requirements

14. We next multiplied the revised payment units for each service by our FY 1996 fee amounts in each fee category to determine how much revenue we would collect without any change to the existing Schedule of Regulatory Fees. The amount of revenue we would collect is approximately $136.5 million. This amount is approximately $16.0 million less than the amount the Commission is required to collect in FY 1997. We then adjusted these revenue requirements for each fee category on a proportional basis, consistent with Section 9(b)(2) of the Act, to obtain an estimate of revenue requirements for each fee category at the $152,523,000 level required by Congress for FY 1997. Attachment C provides detailed calculations showing how we determined the revised revenue amount for each service.

3. Calculation of Regulatory Costs

15. On October 1, 1995, the Commission established, in accordance with 47 U.S.C. § 159(i), a cost accounting system designed, in part, to provide us with useful data, in combination with other information, to help ensure that fees closely reflected our actual costs of regulation. The Commission's cost accounting system, which is integrated with our personnel/payroll system to ensure accuracy and

[1] Payment units are the number of subscribers, mobile units, pagers, cellular telephones, licenses, call signs, adjusted gross revenue dollars, etc. which represent the base volumes against which fee amounts are calculated.

[2] We also will incorporate a similar Attachment in the *Report and Order* concluding this rulemaking. That Attachment will contain updated information concerning any changes made to the proposed fees adopted by the *Report and Order.*

[3] It is important to note also that, due to revised payment units, Congress' required revenue increase in regulatory fee payments of approximately 21 percent in FY 1997 will not fall equally on all payers.

timeliness of cost information, accumulates both personnel and non-personnel costs on a service-by-service basis.

16. In order to utilize actual costs for fee development purposes, we first had to add indirect support costs to the direct costs[4] and then adjust the results to approximate the amount of revenue that Congress requires us to collect in FY 1997 ($152,523,000).[5] Thus, we adjusted the actual cost data pertaining to regulatory fee activities recorded for the period October 1, 1995 through September 30, 1996 proportionally among the fee categories so that total costs approximated $152,523,000. For fee categories where fees are further differentiated by class or market (e.g., Markets 1–10 under the general VHF and UHF Commercial Television fee category), we distributed the costs to the class or market group by maintaining the same ratios between the classes or market groups as between the fees in the FY 1996 schedule.[6] The results of these calculations are shown in detail in Attachment D and represent our best estimate of actual total attributable costs relative to each fee category for FY 1997.[7]

4. Establishment of 25% Revenue Ceiling

17. Our next step was to determine whether reliance on actual costs to develop FY 1997 regulatory fees would result in fees which are too disparate from corresponding FY 1996 fees. As a result of this analysis, we are proposing to establish a ceiling of 25 percent on the increase in the revenue requirement of any service over and above the Congressionally mandated increase in the overall revenue requirement and the difference in unit counts.[8] Because Congress has increased our overall fee collection requirement, we are already required to collect substantially more than we collected in FY 1996. Nevertheless, capping each service's revenue requirement at no more than a 25 percent increase enables us to begin the process of reducing fees for services with lower costs and increasing fees for services with higher costs in order to close the gap between actual costs and fees designed to recover these costs. We are not suggesting that fee increases be limited to a 25 percent increase over the FY 1996 fees. The 25 percent increase is over and above the revenue which would be required after adjusting for the projected FY 1997 payment units and the proportional share of the 21 percent increase in the amount that Congress requires us to collect. Thus, FY 1997 fees may increase more than 25 percent over FY 1996 fees depending upon the number of payment units.

18. An important consideration in proposing the establishment of a revenue ceiling is the impact on other fee payers. Because the Commission is required to collect a full $152,523,000 in FY 1997 regulatory fees, the additional revenue ($28,024,533) that would have been collected from classes of licensees subject to the revenue ceiling had there been no ceiling, needs to be collected instead from licensees not subject to the ceiling. This results in a certain amount of subsidization between fee payer classes.[9] We believe, however, that the public interest is best served by adopting our proposed revenue ceiling methodology. To do otherwise would subject several entities to unexpected major increases which would severely impact the economic well being of certain licensees who will not be able to adjust their business plans accordingly. Attachment E displays the step-by-step process we used to calculate adjusted revenue requirements for each fee category for FY 1997, including the reallocation of revenue requirements resulting from the application of our proposed revenue ceilings.[10] We invite comments on our proposed methodology to incorporate actual costs into the computation of regulatory fees and to establish the 25% revenue ceiling.

5. Recalculation of Fees

19. Once we determined the amount of fee revenue necessary to collect from each class of licensee, we divided the revenue requirement by the number of payment units (and by the license term, if applicable, for ''small'' fees) to obtain actual fee amounts for each fee category. These calculated fee amounts were then rounded in accordance with Section 9(b)(3) of the Act. See Attachment E.

6. Other Proposed Change—Consolidation of Private Microwave & Domestic Public Fixed Fee Categories

20. We examined the results of our calculations made in Paragraphs 15–19

[4] One feature of the cost accounting system is that it separately identifies direct and indirect costs. Direct costs include salary and expenses for (a) staff directly assigned to our operating Bureaus and performing regulatory activities and (b) staff assigned outside the operating Bureaus to the extent that their time is spent performing regulatory activities pertinent to an operating Bureau. These costs include rent, utilities and contractual costs attributable to such personnel. Indirect costs include support personnel assigned to overhead functions such as field and laboratory staff and certain staff assigned to the Office of Managing Director. The combining of direct and indirect costs is accomplished on a proportional basis among all fee categories as shown on Attachment D.

[5] Congress' estimate of costs to be recovered through regulatory fees is generally determined twelve months before the end of the fiscal year to which the fees actually apply. As such, year-end actual activity costs for FY 1996 do not equal exactly the amount Congress designated for collection for FY 1997.

[6] While some might argue that the Commission should further distinguish our work activities by fee category (e.g., television markets or radio classes), it would not be practical to use small, time-consuming incremental breakouts of work time.

[7] For example, under the FM Radio fee classification, the actual costs attributable to FM radio are $8,452,323. This amount is allocated to FM Classes C,C1,C2,B; Classes A,B1,C3; and FM Construction Permits (CP) as follows:

(1) First we determine the relationships between the three categories by dividing the smallest of the FY 1996 FM fees into each of the FY 1996 FM fees to determine the appropriate ratios for allocation of the revenue requirement.

(a) FY 1996 FM CP fee=$690

FY 1996 FM Classes A, B1, and C3=$830

FY 1996 FM Classes C, C1, C2, and B=$1,250

(b) FM CP ratio is $690 divided by $690=1:1

FM Classes A, B1, and C3 ratio is $830 divided by $690=1:1.2

FM Classes C, C1, C2, and B ratio is $1,250 divided by $690=1:1.8

(2) Next we add the three ratios and divide the sum into the total revenue requirement for FM to determine the amount corresponding to the ratio of 1.

(a) 1+1.2+1.8=4

(b) $8,452,323 divided by 4=$2,113,081

(3) Finally, we determine the fee for each of the three by multiplying the amount calculated in step (2)(b) by each of the ratios.

FM CP revenue requirement=1 times $2,113,081=$2,113,081

FM Classes A, B1, and C3 revenue requirement=1.2 times $2,113,081=$2,535,697

FM Classes C, C1, C2, and B revenue requirement=1.8 times $2,113,081=$3,803,546

[8] For example, the regulatory cost associated with the Aviation (Aircraft) service is $933,492. If no change were made to this service's FY 1996 regulatory fee ($3 per year), the total revenue collected from licensees in this service would be only $117,327 in FY 1997, a shortfall of $816,165. Application of the proposed 25 percent revenue ceiling to this service results in a capped revenue ceiling of $146,659 ($117,327×125%).

[9] Revenues from current fee payers already offset costs attributable to regulatees exempt from payment of a fee or otherwise not subject to a fee pursuant to section 9(h) of the Act or the Commission's rules. For example, CB and ship radio station users, amateur radio licensees, governmental entities, licensees in the public safety radio services, and all non-profit groups are not required to pay a fee. The costs of regulating these entities is borne by those regulatees subject to a fee requirement.

[10] Application of the 25% ceiling was accomplished by choosing a ''target'' fee revenue requirement for each individual fee category. This ''target'' was either the actual calculated revenue requirement (for those categories at or below the 25% ceiling) or, in the case where the calculated revenue exceeded the ceiling, an amount equal to the ceiling. The shortfall created by reducing the revenue requirement of those whose revenue requirement exceeded the revenue ceiling was proportionately spread among those fee categories whose revenue requirements were below the ceiling. This computation required more than one round of adjustment because the allocation of this revenue, in a few instances, caused the new revenue requirement amount to exceed the 25% ceiling. After two iterations (rounds), all the revenue requirements were at or below the revenue ceiling. See Attachment E.

to determine if further adjustments of the fees and/or changes to payment procedures were warranted based upon the public interest and other criteria established in 47 U.S.C. 159(b)(3). As a result of this review, we are proposing the following change to our Fee Schedule:

21. In our FY 1994, FY 1995 and FY 1996 fee schedules, Private Microwave licensees were required to pay a ''small'' regulatory fee, in advance, for the entire license term at the time of application. In contrast, the Domestic Public Fixed category was considered a ''large'' regulatory fee subject to an annual payment. The domestic public fixed category is comprised of several commercial microwave services; e.g., microwave multiple address, microwave common carrier fixed, microwave digital electronic message, and microwave local TV transmission.[11]

22. Since inception of the regulatory fee program, many parties holding microwave licenses have expressed confusion concerning which fee they are required to pay. In order to alleviate this confusion and because operational and technical characteristics of private microwave and commercial microwave systems are similar, we are proposing to combine these two fee categories into a single Microwave category for FY 1997.

23. Accordingly, we are proposing to adjust the anticipated number of payment units and combine the revenue requirements for the Private Microwave and Domestic Public Fixed categories and establish a ''small'' fee, payable in advance for the entire license term, for the new consolidated Microwave category. The annual regulatory fee for all microwave licensees would be $10 per license. This new fee was calculated as follows:

(a) From Attachments C and E:

(1) 5,350 private microwave stations (units) (Revenue requirement = $523,083)

(2) 18,845 commercial microwave/ public fixed stations (units) (Revenue requirement = $118,026)

(b) Converting from annual payment (''large fee'') to license term payment (''small fee''):

(1) 18,845 commercial microwave units divided by 10 year license term = 1,885 commercial microwave units to be licensed each year.

(c) Calculation of new microwave fee: The sum of the two revenue requirements divided by the sum of the units to be licensed and divided by the license term as follows:

(1) (($523,083 + $118,026) divided by (5,350 + 1,885)) divided by 10 years = $8.86

(d) Round fee to the nearest $5 = $10 (47 U.S.C § 159(b)(2)).

24. We invite comments on our proposal to combine the Private Microwave and Domestic Public Fixed (Commercial Microwave) service categories for regulatory fee purposes into a single Microwave category and to establish an appropriate ''small'' fee for this single category.

7. Effect of Revenue Redistributions on Major Constituencies

25. The chart below illustrates the relative percentages of the revenue requirements borne by the major constituencies since inception of regulatory fees in FY 1994.

REVENUE REQUIREMENT PERCENTAGES BY CONSTITUENCIES

	FY 1994 (Actual)	FY 1995 (Actual)	FY 1996 (Actual)	FY 1997 (Proposed)
Cable TV Operators (Inc. CARS Licenses)	41.36	24.02	28.19	23.74
Broadcast Licensees	23.84	13.76	14.77	14.96
Satellite Operators (Inc. Earth Stations)	3.32	3.62	4.28	4.28
Common Carriers	25.01	44.52	45.54	46.27
Wireless Licensees	6.47	14.07	7.23	10.75
Total	100.00	99.99	100.01	100.00

C. Other Issues

1. Commercial AM/FM Radio

26. In November 1996 the Commission released a *Notice of Inquiry* to determine if, in FY 1997, it is feasible to utilize a methodology based on market size and class of station to assess annual regulatory fees upon licensees of commercial AM and FM broadcast radio stations. We invited interested parties to comment upon a methodology proposed by the Montana Broadcasters Association (Montana), or to propose any other methodology for assessing AM and FM fees they believe would serve the public interest. See *Amendment of Part 1 of the Commission's Rules Pertaining to the Schedule of Annual Regulatory Fees for Mass Media Services*, FCC 96–422, released November 6, 1996, 61 FR 59397 (November 22, 1996).

27. In establishing our regulatory fee program, we recognized that Congress had required the Commission to adopt the Schedule of Regulatory Fees for FY 1994 contained in Section 9(g) of the Communications Act, as amended. 47 U.S.C. § 159(g). The Schedule assessed AM and FM radio fees based upon class of station. Thus, each licensee paid a fee identical to other licensees with the same class of station, without regard to the size or population of its service area. *See Implementation of Section 9 of the Communications Act*, 9 FCC Rcd 5333, 5339 (1994), 59 FR 30984 (June 16, 1994). We declined to consider any revision to the fee schedule for FY 1994, but we invited interested parties to propose alternative methodologies for various services subject to the regulatory fees, including AM and FM radio, for consideration in our proceeding to adopt the FY 1995 Schedule of Regulatory Fees. 9 FCC Rcd 5360. Subsequently, in our *NPRM* proposing fees for FY 1995, we recognized that ''population density of a [AM or FM] station's geographic location was also a public interest factor warranting recognition in the fee schedule.'' Therefore, we proposed for consideration by interested parties a methodology incorporating market size in the calculation of AM and FM fees, by assessing higher fees for radio stations located in Arbitron Rating Co. (Arbitron) designated markets. We proposed a two-tiered fee schedule with stations in Arbitron rated markets paying higher fees than the same classes of stations located in smaller, non-

[11] Although the Multipoint Distribution Service (MDS) and the Multichannel Multipoint Distribution Service (MMDS) were originally grouped with Domestic Public Fixed services, we have, since FY 1995, listed them separately in our Fee Schedule.

Arbitron rated markets. See *Notice of Proposed Rulemaking in the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 1995,* MD Docket No. 95–3, FCC 95–14, released January 12, 1995 at Paragraph 29. In our *Report and Order* establishing our FY 1995 fees, we declined to adopt this proposed method because, after consideration of the public comments, we found that it did not provide a ''sufficiently accurate and equitable methodology for determining fees.'' See *Assessment and Collection of Regulatory Fees for Fiscal Year 1995,* 10 FCC Rcd 13512, 13531–32 (1996), 60 FR 34004 (June 29, 1995).

28. In our *Notice of Proposed Rulemaking* to establish regulatory fees for FY 1996, we stated, with regard to the fees for AM and FM radio stations, that we ''were particularly interested in a proposal which would associate population density and service area contours with license data'' and we again requested interested parties to propose viable alternative methodologies for assessment of AM and FM fees. *Assessment and Collection of Regulatory Fees for Fiscal Year 1996,* FCC 96–153, at Paragraphs 20–21 (April 9, 1996), 61 FR 16432 (April 15, 1996). In response, Montana filed comments proposing an AM and FM fee structure based on class of station and on market size. We received no comments addressing Montana's proposal. However, following our own review of the proposal, we decided not to take any action until we had an opportunity to evaluate more extensively the impact of Montana's proposal on AM and FM licensees through a *Notice of Inquiry. Assessment and Collection of Regulatory Fees for Fiscal Year 1996,* FCC 96–295, at Paragraphs 23–29, July 5, 1996, 61 FR 36629 (July 12, 1996).

29. Montana's proposed methodology utilizes broad groupings of radio markets determined by Arbitron market size, with the fee for each market grouping predicated on the ratios that Congress initially established in Section 9(g) of the Act (47 U.S.C. § 159(g)) for assessing fees for licensees of television stations serving different sized markets. Montana proposed four specific radio market classifications: Markets 1–25; Markets 26–50; Markets 51–100; and Remaining Markets. Montana's proposal assigned stations to each market grouping based upon Arbitron television market designations and relied on an analysis of broadcast markets prepared by Dataworld MediaXpert Service (''Dataworld''), which grouped radio stations by class of station within a particular market size. It then calculated the fees for stations in different markets utilizing the ratios between the fees for television markets in Section 9(g). Montana argued that its proposal was more equitable than the groupings based on class of station relied on by the Commission because, under its proposal, stations in smaller markets would pay lower fees than stations serving more populous markets.

30. In order to collect the total aggregate fees to be recovered from AM and FM radio stations as proposed in the FY 1995 *NPRM,* Montana's proposed methodology would have allocated fees among radio stations as follows:

Markets	AM Class A	AM Class B	AM Class C	AM Class D	FM Class I[12]	FM Class II[13]
1–25	$2,890	$1,710	$645	$815	$2,890	$1,940
26–50	2,040	1,140	455	575	2,040	1,370
51–100	1,360	760	305	385	1,360	910
Remaining	850	475	190	240	850	570

[12] Class I includes FM Classes C, C1, C2 and B.
[13] Class II includes FM Classes A, B1 and C3.

31. However, subsequent to the filing of Montana's proposal, Congress increased the aggregate amount of fees to be recovered by the Commission and amended the Commission's regulatory fee schedule for television stations to increase the fees paid by licensees in larger markets and to reduce the fees paid by licensees located in Markets 51–100 and the Remaining Markets. Public Law 104–134. *See Assessment and Collection of Regulatory Fees for Fiscal Year 1996, supra* at Paragraph 14. This substantially changed the ratios between the fees for television stations in different sized markets used by Montana to compute its proposed radio fees. Substituting the actual ratios between the regulatory fees for television stations in different sized markets for the old ratios utilized in Montana's proposal would have produced the following radio fees for FY 1996: [14]

Markets	AM Class A	AM Class B	AM Class C	AM Class D	FM Class I[15]	FM Class II[16]
1–25	$11,500	$6,325	$2,575	$3,150	$4,875	$3,250
26–50	6,675	3,675	1,500	1,850	2,850	1,900
51–100	3,550	1,975	800	980	1,525	1,000
Remaining	1,000	555	225	275	430	285

[15] Class I includes FM Classes C, C1, C2 and B.
[16] Class II includes FM Classes A, B1 and C3.

32. The above fees illustrate the impact of the Montana proposal when the changes mandated by Congress to the Regulatory Fee Schedule are considered. We are particularly concerned about the size of the increases in larger markets which, in addition to having more potential listeners, have greater concentrations of stations, thereby increasing the competition for listeners in those markets. Moreover, the accuracy of both sets of calculations are predicated on assumptions that the total aggregate amount of fees to be collected remains unchanged, that the revenue requirement allocated to all broadcast licensees remains unchanged, and that

[14] By contrast, according to the FY 1996 Schedule of Regulatory Fees, AM class A stations are assessed a fee of $1,250; Class B stations $690; Class C stations $280; and Class D stations $345. Similarly, FM Class C, C1, C2 and B stations (Montana's FM Class I) are assessed a fee of $1,250; and FM Class A, B1 and C3 stations (Montana's FM Class II) a fee of $830.

there are no changes in the numbers and classes of licensees subject to broadcast fees. The calculations presented herein are illustrative only, because the fees are predicated on assumptions that will not recur in FY 1997. A change in any or all three of these factors would result in individual fees different than those illustrated in Paragraphs 30 and 31.

33. In response to the *NOI*, the National Association of Broadcasters (''NAB'') submitted a proposed fee table for AM and FM radio stations relying on a database prepared by Dataworld. NAB states that Dataworld developed its database by using the engineering specifications for every operating AM and FM radio station to calculate the populations served by those stations using 1990 census information. Under NAB's proposal, stations with more powerful signals would generally pay higher fees because they usually serve more people than stations with weaker signals. NAB maintains that a fee schedule based on the Dataworld information would equitably allocate fees among all stations.

34. In support of its proposal, NAB notes that Congress has recognized the importance of service classes in the fee schedule it enacted in Section 9(g) of the Act, and that there are significant differences in the value and revenue potential of stations in different classes. 47 U.S.C. § 159(g). Thus, NAB contends that radio station fees should not be calculated on the basis of predicted audience alone. Moreover, NAB recognizes that Dataworld's data does not reflect population changes since 1990 and that, in certain instances, there will be discrepancies between the Dataworld calculations and some stations' actual engineering characteristics. Thus, NAB proposes fees based on the estimate of population served and the class of station rather than strictly on the basis of population served.

35. The proposed NAB fee table includes 24 fee levels for AM and 12 fee levels for FM. NAB's proposed fee table would collect $6,104,196 from FM licensees and $2,235,956 from AM licensees, as follows:

Population served	AM Class A	AM Class B	AM Class C	AM Class D
<= 100,000	$325	$260	$125	$165
100,001–250,000	375	325	175	225
250,001–500,000	575	450	250	325
500,001–1,500,000	975	650	325	425
1,500,001–3,000,000	1,500	950	450	575
> 3,000,000	1,800	1,300	650	750

Population served	FM classes A, B1, C3	FM Classes B, C, C1, C2
<= 40,000	$300	$450
40,001–100,000	450	925
100,001–250,000	925	1,350
250,001–750,000	1,150	1,750
750,001–1,750,000	1,300	2,000
> 1,750,000	1,650	2,750

36. While the NAB proposal has merit, further study and refinement of its methodology is required. First, we note that the NAB proposal increases fees based on the average increase in the amount that Congress has required us to collect for FY 1997 without taking into account our cost of regulation of AM and FM stations as measured by our cost accounting system. As a result, its proposal would fail to raise sufficient revenue to cover the pro rata share of the Commission's revenue requirements for AM and FM radio. Moreover, NAB's proposal does not disclose the number of stations in each of its payment categories so that its proposal can be modified to meet our revenue requirements, there are discrepancies between our estimate of the number of stations and the number of stations included in Dataworld's database, and it is not clear whether the Dataworld station count includes government and non-commercial stations which are exempt from regulatory fee requirements. In addition, NAB has not presented an explanation or rationale for its specific fee classifications. Nor is there sufficient information to permit the Commission to determine how NAB's proposed fee table can be modified to cover changes in station characteristics and populations. If we were to adopt NAB's proposal, we would also be required to develop a methodology for advising each individual station of its fee based on our estimate of the population in its service area.

37. Thus, while the Montana and NAB proposals hold the promise of a more equitable fee schedule, there are problems with these proposals that must be addressed before they can be relied on to develop a revised fee schedule for AM and FM radio. Therefore, interested parties are invited to comment not only on both the NAB and Montana proposals, but also on any alternative methods for assessing radio station fees. Parties who have filed comments on the *NOI* need not duplicate them in this proceeding. Comments are also invited with respect to the revised schedule for AM and FM radio stations set forth in Attachment F based on the general methodology for calculating FY 1997 fees.

2. Personal Communications Service (PCS)

38. Our FY 1996 *Report and Order* deferred assessing a regulatory fee upon licensees in the Personal Communications Service (''PCS'') in FY 1996 because the service was in a very early start-up phase. See *FY 1996 Report and Order* at Appendix F, Paragraph 15. We now believe that there are sufficient operational PCS systems to justify their inclusion among those licensees who are assessed fees in the CMRS Mobile Services and CMRS One-Way Paging fee categories for FY 1997. We have therefore incorporated fees for PCS in Paragraphs 14 and 15 of Attachment H.

3. Commercial Mobile Radio Services (CMRS)

39. In our FY 1996 *Report and Order* at Paragraph 22, we discussed a proposal offered by Destineer, Inc., a PCS licensee, that we establish a CMRS Messaging Service fee category to

replace our CMRS One-Way Paging fee category. Destineer stated that, with the exception of two-way paging services, our CMRS Mobile Services fee category includes only broadband services which provide two-way interactive voice communications. Destineer recommended establishing a CMRS Messaging Service to include all narrowband services, including two-way paging services. We invite interested parties to file comments on Destineer's proposal or propose alternative methods to assess CMRS fees for FY 1997. We are particularly interested in the number of estimated units associated with an alternative proposal and the impact the proposed changes would have on projected revenues.

4. Intelsat & Inmarsat Signatories

40. The Commission incurs regulatory costs for satellite policy and rulemaking, enforcement and user information activities. As directed by Congress, these costs must be recovered through the collection of regulatory fees. In accordance with the provisions of Section 9, the Commission's overall goal is to recover all of the costs associated with satellite regulatory activities and to distribute these costs fairly amongst fee payers, taking into account factors reasonably related to the benefits provided by the payer, and ''other factors we determine are necessary in the public interest.''

41. In FY 1994 and FY 1995 the Commission recovered satellite regulatory costs by collecting fees from satellite earth station and geosynchronous space station regulatees (Part 25) only. Satellite providers using international bearer circuits to provide service were assessed a separate fee under the International Bearer Circuits category in order to recover the regulatory costs associated with international telecommunications policy and rulemaking, enforcement and user information activities. The Commission received comments during both years' regulatory fees proceedings concerning the distribution of the burden of costs. In an effort to explore alternative methods of fee collection the Commission conducted focus group sessions in FY 1995 which were attended by satellite industry representatives. One of the major issues raised was a perceived inequity in the distribution of the total satellite regulatory fee burden. Commission activities associated with Intelsat, Inmarsat and the U.S. signatory to both were identified as areas where space and earth station regulatees were unfairly bearing the regulatory fee burden.

42. In response to distribution issues raised in the focus group sessions and comments filed in previous years, we examined satellite regulatory activities and determined that since the Commission incurs regulatory costs associated with Signatory-related activities, a regulatory fee for Signatories was the proper vehicle for recovering these costs. In its comments on the proposed FY 1996 fees, Comsat challenged the Commission's proposal regarding the Signatory fee, contending that it would be unlawful and excessive. Each of these arguments was discussed in our FY 1996 *Report and Order,* in which we adopted the Signatory fee. However, in Paragraph 47 of the FY 1996 *Report and Order,* we indicated our intent to explore alternative means of recovering these costs and to seek public comment on such alternatives. We therefore request interested parties to comment on alternative methods of collecting costs associated with Signatories. We request that comments specify whether other regulatees should be assessed a portion of the fee applicable to the signatory category, and, if so, the estimated percentage of the fee that should be assessed upon other regulatees. We are particularly interested in ways to recover our costs without unfairly burdening other regulatees. If no specific alternative is identified, we propose to retain the current Signatory fee category for FY 1997.

5. Non-Common Carrier International Bearer Circuits

43. International bearer circuit fees are currently assessed upon domestic and international common carriers only. In its comments responding to proposals contained in our FY 1996 *NPRM,* Comsat contended that payment of international bearer circuit fees should be expanded to non-common carriers providing international services. See FY 1996 *Report and Order* at Paragraph 65. In our FY 1996 *Report and Order* we declined to expand collection of international bearer circuit fees to non-common carriers. As we noted at that time, the Commission is unable, due to lack of appropriate data, to calculate a fee applicable to bearer circuits provided directly to end users over non-common carrier domestic and international facilities. The foregoing situation has not changed. We, therefore, are proposing to assess the international bearer circuit fee only on domestic and international common carriers in FY 1997. However, we invite interested parties to comment on Comsat's proposal. We are especially interested in information concerning the number of bearer circuits provided directly to end users over non-common carrier domestic and international facilities.

D. Procedures for Payment of Regulatory Fees

44. Generally, we propose to retain the procedures that we have established for the payment of regulatory fees. Section 9(f) requires that we permit ''payment by installments in the case of fees in large amounts, and in the case of small amounts, shall require the payment of the fee in advance for a number of years not to exceed the term of the license held by the payer.'' *See* 47 U.S.C. § 159(f)(1). Consistent with Section 9(f), we are again establishing three categories of fee payments, based upon the category of service for which the fee payment is due and the amount of the fee to be paid. The fee categories are (1) ''standard'' fees, (2) ''large'' fees, and (3) ''small'' fees.

1. Annual Payments of Standard Fees

45. Standard fees are those regulatory fees that are payable in full on an annual basis. Payers of standard fees are not required to make advance payments for their full license term and are not eligible for installment payments. All standard fees are payable in full on the date we establish for payment of fees in their regulatory fee category. The payment dates for each regulatory fee category will be announced either in the *Report and Order* in this proceeding or by public notice in the Federal Register following the termination of this proceeding.

2. Installment Payments for Large Fees

46. While we are mindful that time constraints may preclude an opportunity for installment payments, we propose that regulatees in any category of service with a liability of $12,000 or more be eligible to make installment payments and that eligibility for installment payments be based upon the amount of either a single regulatory fee payment or combination of fee payments by the same licensee or regulatee. We propose that regulatees eligible to make installment payments may submit their required fees in two equal payments (on dates to be announced) or, in the alternative, in a single payment on the date that their final installment payment is due. Due to statutory constraints concerning notification to Congress prior to actual collection of the fees, however, it is unlikely that there will be sufficient time for installment payments, and that

regulatees eligible to make installment payments will be required to pay these fees on the last date that fee payments may be submitted. The dates for installment payments, or a single payment, will be announced either in the *Report and Order* terminating this proceeding or by public notice published pursuant to delegated authority in the Federal Register.

3. Advance Payments of Small Fees

47. As we have in the past, we are proposing to treat regulatory fee payments by certain licensees as ''small'' fees subject to advance payment consistent with the requirements of Section 9(f)(2). Advance payments will be required from licensees of those services that we decided would be subject to advance payments in our FY 1994 *Report and Order*, and to those additional payers set forth herein.[17] Payers of advance fees will submit the entire fee due for the full term of their licenses when filing their initial, renewal, or reinstatement application. Regulatees subject to a payment of small fees shall pay the amount due for the current fiscal year multiplied by the number of years in the term of their requested license. In the event that the required fee is adjusted following their payment of the fee, the payer would not be subject to the payment of a new fee until filing an application for renewal or reinstatement of the license. Thus, payment for the full license term would be made based upon the regulatory fee applicable at the time the application is filed. The effective date for payment of small fees established in this proceeding will be announced in our *Report and Order* terminating this proceeding or by public notice published pursuant to delegated authority in the Federal Register.

4. Minimum Fee Payment Liability

48. Regulatees whose total fee liability, including all categories of fees for which payment is due by an entity, amounts to less than $10 are exempted from fee payment in FY 1997.

5. Standard Fee Calculations and Payment Dates

49. As noted, the time for payment of standard fees and any installment payments will be published in the Federal Register pursuant to delegated authority. For licensees, permittees and holders of other authorizations in the Common Carrier, Mass Media, and Cable Services whose fees are not based on a subscriber, unit, or circuit count, fees should be submitted for any authorization held as of *October 1, 1996.* October 1 is the date to be used for establishing liability for payment of standard fees since it is the first day of the federal government's fiscal year.

50. In the case of regulatees whose fees are based upon a subscriber, unit or circuit count, the number of a regulatees' subscribers, units or circuits on *December 31, 1996,* will be used to calculate the fee payment.[18] We have selected the last date of the calendar year because many of these entities file reports with us as of that date. Others calculate their subscriber numbers as of that date for internal purposes. Therefore, calculation of the regulatory fee as of that date will facilitate both an entity's computation of its fee payment and our verification that the correct fee payment has been submitted.

E. Schedule of Regulatory Fees

51. The Commission's proposed Schedule of Regulatory Fees for FY 1997 is contained in Attachment F of this *NPRM.*

IV. Procedural Matters

A. Comment Period and Procedures

52. Pursuant to procedures set forth in Sections 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before March 25, 1997, and reply comments on or before April 4, 1997. All relevant comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments and supporting materials. If participants want each Commissioner to receive a personal copy of their comments, an original and nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Interested parties, who do not wish to formally participate in this proceeding, may file informal comments at the same address. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20054.

B. Ex Parte Rules

53. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed pursuant to the Commission's rules. *See* 47 CFR §§ 1.1202, 1.1203 and 1026(a).

C. Initial Regulatory Flexibility Analysis

54. As required by section 603 of the Regulatory Flexibility Act (Public Law 96–354, 94 Stat. 1165, 5 U.S.C. § 601 *et seq.* (1981)), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. The IRFA is set forth in Attachment A. Written public comments are requested with respect to the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the rest of the *NPRM,* but they must have a separate and distinct heading, designating the comments as responses to the IRFA. The Secretary shall send a copy of this *NPRM,* including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act.

D. Paperwork Reduction Act Compliance

55. The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected, and (d) ways to minimize the burden of the collection of information on the respondents, including the use of

[17] Applicants for new, renewal and reinstatement licenses in the following services will be required to pay their regulatory fees in advance: Land Mobile Services, Microwave services, Marine (Ship) Service, Marine (Coast) Service, Private Land Mobile (Other) Services, Aviation (Aircraft) Service, Aviation (Ground) Service, General Mobile Radio Service (GMRS). In addition, applicants for Amateur Radio vanity call signs will be required to submit an advance payment.

[18] Cable system operators are to compute their subscribers as follows: Number of single family dwellings + number of individual households in multiple dwelling unit (apartments, condominiums, mobile home parks, etc.) paying at the basic subscriber rate + bulk rate customers + courtesy and free service. Note: Bulk-Rate Customers = Total annual bulk-rate charge divided by basic annual subscription rate for individual households. Cable system operators may base their count on ''a typical day in the last full week'' of December 1996, rather than on a count as of December 31, 1996.

automated collection techniques or other forms of information technology.

56. Written comments should be submitted on or before May 9, 1997. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

57. Direct all comments to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M St. NW., Washington, DC 20554 or via internet to dconway@fcc.gov, and Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 17th St. NW., Washington, DC 20503 or via internet to fain__t@a1.eop.gov.

58. For Further Information Contact: For additional information or copies of the information collections, contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

OMB Approval Number: (Number should be included if it is a revision to an existing collection).

Title:

Form No.:

Type of Review: (i.e. new collection, revision of existing collection)

Respondents:

Number of Respondents:

Estimated Time Per Response:

Total Annual Burden:

Needs and Uses: (Brief description of how the information will be used)

E. Authority and Further Information

59. Authority for this proceeding is contained in sections 4(i) and (j), 9, and 303(r) of the Communications Act of 1934 as amended, 47 U.S.C. §§ 154(1) and (j) and 159 and 303(r).

60. Further information about this proceeding may be obtained by contacting the Fees Hotline at (202) 418–0192.

List of Subjects in 47 CFR Part 1

Administrative practice and procedures, Communications common carriers, Penalties, Radio, Telecommunications, Television.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Attachment A—Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act (RFA),[19] as amended by the Contract with America Advancement Act (CWAAA), Public Law 104–121, 110 Stat. 847 (1996),[20] the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected significant economic impact on small entities by the policies and rules proposed in this *Notice of Proposed Rulemaking In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 1997.* Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM* provided above in Paragraph 53.

I. Need for and Objectives of the Proposed Rule

2. This rulemaking proceeding is initiated to obtain comments concerning the Commission's proposed amendment of its Schedule of Regulatory Fees in order to collect regulatory fees in the amount of $152,523,000, the amount that Congress has required the Commission to recover through regulatory fees in Fiscal Year 1997. The Commission seeks to collect the necessary amount through its proposed revised regulatory fees, as contained in the attached Schedule of Regulatory Fees, in the most efficient manner possible and without undue burden to the public.

II. Legal Basis

3. The proposed action is authorized under Sections (4)(i) and (j), 9 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and (j), 159, and 303(r).

III. Description and Estimate of the Number of Small Entities to Which the Proposed Rule Will Apply

4. The RFA generally defines ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction'' and ''the same meaning as the term 'small business concern' under the Small Business Act unless the Commission has developed one or more definitions that are appropriate for its activities.[21] A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[22] The Small Business Enforcement Fairness Act of 1996 (SBREFA) provision of the RFA also applies to nonprofit organizations and to governmental organizations such as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations of less than 50,000.[23] There are 85,006 governmental entities in the United States.[24] 5 U.S.C. § 601(3) (incorporating by reference the definition of ''small business concern'' in 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies ''unless an agency after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.''

Cable Services or Systems

5. The SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating $11 million or less in revenue annually.[25] This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau, there were 1,788 total cable and other pay television services and 1,423 had less than $11 million in revenue.[26]

6. The Commission has developed its own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a ''small cable company,'' is one serving fewer than 400,000 subscribers nationwide.[27] Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as

[19] 5 U.S.C. § 603.

[20] Title II of the CWAAA is ''The Small Business Regulatory Enforcement Fairness Act of 1996'' (SBREFA), codified at 5 U.S.C. § 601 et seq.

[21] 5 U.S.C. § 601(3) (incorporating by reference the definition of ''small business concern'' in 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies ''unless an agency after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.''

[22] Small Business Act, 15 U.S.C. § 632 (1996).

[23] 5 U.S.C. § 601(5).

[24] United States Dept. of Commerce, Bureau of the Census, *1992 Census of Governments* (1992 Census).

[25] 13 CFR § 121.201, SIC 4841.

[26] *1992 Economic Census Industry and Enterprise Receipts Size Report,* Table 2D, SIC 4841 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

[27] 47 CFR § 76.901(e). The Commission developed this definition based on its determination that a small cable system operator is one with annual revenues of $100 million or less. *Implementation of Sections of the 1992 Cable Act: Rate Regulation, Sixth Report and Order and Eleventh Order on Reconsideration,* 10 FCC Rcd 7393 (1995), 60 FR 10534 (February 27, 1995).

small cable system operators at the end of 1995.[28] Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators.

7. The Communications Act also contains a definition of a small cable system operator, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' [29] The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 617,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate.[30] Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals 1,450.[31] We do not request nor do we collect information concerning whether cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000,[32] and thus are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act. It should be further noted that recent industry estimates project that there will be a total 65,000,000 subcribers, and we have based our fee revenue estimates on that figure.

8. Other Pay Services. Other pay television services are also classified under SIC 4841, which includes cable systems operators, closed circuit television services, direct broadcast satellite services (DBS),[33] multipoint distribution systems (MDS),[34] satellite master antenna systems (SMATV), and subscription television services.

Common Carrier Services and Related Entities

9. According to the *Telecommunications Industry Revenue: Telecommunications Relay Service Fund Worksheet Data (TRS Worksheet)*, there are 2,847 interstate carriers. These carriers include, *inter alia*, local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone toll service, providers of telephone exchange service, and resellers.

10. The SBA has defined a small business for Radiotelephone Communications (SIC 4812) and Telephone Communications, Except Radiotelephone (4813), to be small entities when they have fewer than 1,500 employees.[35] We first discuss generally the total number of small telephone companies falling within both of those SIC categories. Then, we discuss the number of small businesses within the two subcategories, and attempt to refine further those estimates to correspond with the categories of telephone companies that are commonly used under our rules.

11. Because the small incumbent LECs subject to these rules are either dominant in their field of operations or are not independently owned and operated, consistent with our prior practice, they are excluded from the definition of ''small entitiy'' and ''small business concerns.'' [36] Accordingly, our use of the terms ''small entities'' and ''small businesses'' does not encompass small incumbent LECs. Out of an abundance of caution, however, for regulatory flexibility analysis purposes, we will consider small incumbent LECs within this analysis and use the term ''small incumbent LECs'' to refer to any incumbent LECs that arguably might be defined by the SBA as ''small business concerns.'' [37]

12. Total Number of Telephone Companies Affected. The United States Bureau of the Census (''the Census Bureau'') reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year.[38] This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, personal communications services providers, covered specialized mobile radio providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not ''independently owned and operated.'' [39] For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to tentatively conclude that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent local exchange carriers.

13. Wireline Carriers and Service Providers. The SBA has developed a definition of small entities for telephone communications companies except radiotelephone (wireless) companies. The Census Bureau reports that, there were 2,321 such telephone companies in operation for at least one year at the end of 1992.[40] According to the SBA's definition, a small business telephone company other than a radiotelephone company is one employing fewer than 1,500 persons.[41] All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small incumbent LECs. We do not have information on the number of carriers that are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 2,295 small telephone

[28] Paul Kagan Associates, Inc., *Cable TV Investor*, Feb. 29, 1996 (based on figures for December 30, 1995).

[29] 47 U.S.C. § 543(m)(2).

[30] 47 CFR § 76.1403(b).

[31] Paul Kagan Associates, Inc., *Cable TV Investor*, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

[32] We do receive such information on a case-by-case basis only if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to section 76.1403(b) of the Commission's rules. *See* 47 CFR § 76.1403(d).

[33] Direct Broadcast Services (DBS) are discussed in depth with the international services *infra*.

[34] Multipoint Distribution Services (MDS) are discussed in depth with the mass media services *infra*.

[35] 13 CFR § 121.201.

[36] See *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order*, 11 FCC Rcd 15499 (1996), 61 FR 45476 (August 29, 1996), *motion for stay of the FCC's rules pending judicial review denied, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Order*, 11 FCC Rcd 11754 (1996), 61 FR 54099 (October 17, 1996), *partial stay granted, Iowa Utilities Board* v. *FCC*, No. 96–3321, 1996 WL 589204 (8th Cir. 1996) at paragraphs 1328–1330 and 1342.

[37] See id.

[38] United States Department of Commerce, Bureau of the Census, *1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size*, at Firm Size 1–123 (1995) (1992 Census).

[39] 15 U.S.C. § 632(a)(1).

[40] 1992 Census, supra, at Firm Size 1–123.

[41] 13 CFR § 121.201, SIC Code 4812.

communications companies other than radiotelephone companies.

14. Local Exchange Carriers. Neither the Commission nor the SBA has developed a definition for small providers of local exchange services (LECs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.[42] The most reliable source of information regarding the number of LECs nationwide is the data that we collect annually in connection with the *TRS Worksheet.* According to our most recent data, 1,347 companies reported that they were engaged in the provision of local exchange services.[43] We do not have information on the number of carriers that are not independently owned and operated, nor what carriers have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,347 small incumbent LECs.

15. Interexchange Carriers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under the SBA rules is for telephone communications companies except radiotelephone (wireless) companies.[44] The most reliable source of information regarding the number of IXCs nationwide is the data that we collect annually in connection with the *TRS Worksheet.* According to our most recent data, 130 companies reported that they were engaged in the provision of interexchange services.[45] We do not have information on the number of carriers that are not independently owned and operated, nor have more than 1,500 employees, and thus we are unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 130 small entity IXCs.

16. Competitive Access Providers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of competitive access services (CAPs). The closest applicable definition under the SBA rules is for telephone communications companies except radiotelephone (wireless) companies.[46] The most reliable source of information regarding the number of CAPs nationwide is the data that we collect annually in connection with the *TRS Worksheet.* According to our most recent data, 57 companies reported that they were engaged in the provision of competitive access services.[47] We do not have information on the number of carriers that are not independently owned and operated, nor have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of CAPs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 57 small CAPs.

17. Operator Service Providers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of operator services. The closest applicable definition under the SBA rules is for telephone communications companies except radiotelephone (wireless) companies.[48] The most reliable source of information regarding the number of operator service providers nationwide is the data that we collect annually in connection with the *TRS Worksheet.* According to our most recent data, 25 companies reported that they were engaged in the provision of operator services.[49] We do not have information on the number of carriers that are not independently owned and operated, nor have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of operator service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 25 small operator service providers.

18. Pay Telephone Operators. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to pay telephone operators. The closest applicable definition under SBA rules is for telephone communications companies except radiotelephone (wireless) companies.[50] The most reliable source of information regarding the number of pay telephone operators nationwide is the data that we collect annually in connection with the *TRS Worksheet.* According to our most recent data, 271 companies reported that they were engaged in the provision of pay telephone services.[51] We do not have information on the number of carriers that are not independently owned and operated, nor have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of pay telephone operators that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 271 small pay telephone operators.

19. Resellers (including debit card providers). Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable SBA definition for a reseller is a telephone communications company except radiotelephone (wireless) companies.[52] However, the most reliable source of information regarding the number of resellers nationwide is the data that the Commission collects annually in connection with the *TRS Worksheet.* According to our most recent data, 260 companies reported that they were engaged in the resale of telephone service.[53] We do not have information on the number of carriers that are not independently owned and operated, nor have more than 1,500 employees, and thus we are unable at this time to estimate with greater precision the number of resellers that would qualify as small entities or small incumbent LEC concerns under the SBA's definition. Consequently, we estimate that there are fewer than 260 small entity resellers.

20. 800 Subscribers.[54] Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to 800 subscribers. The most reliable source of information regarding the number of 800 subscribers is data we collect on the number of 800 numbers in use.[55] According to our most recent data, at the end of 1995, the number of 800 numbers in use was 6,987,063. We do not have information on the number of carriers not independently owned and operated, nor have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of 800 subscribers that would qualify as

[42] 13 CFR § 121.201, SIC Code 4813.

[43] Federal Communications Commission, CCB, Industry Analysis Division, *Telecommunications Industry Revenue: TRS Fund Worksheet Data,* Tbl. 1 (Average Total Telecommunications Revenue Reported by Class of Carrier) (December 1996) (TRS Worksheet).

[44] 13 CFR § 121.201, SIC 4813.

[45] TRS Worksheet.

[46] 13 CFR § 121.201, SIC 4813.

[47] TRS Worksheet.

[48] 13 CFR § 121.201, SIC 4813.

[49] Id.

[50] 13 CFR § 121.201, SIC 4813.

[51] TRS Worksheet.

[52] 13 CFR § 121.201, SIC 4813.

[53] TRS Worksheet.

[54] We include all toll-free number subscribers in this category, including 888 numbers.

[55] Federal Communications Commission, CCB, Industry Analysis Division, *FCC Releases, Study on Telephone Trends,* Tbl. 20 (May 16, 1996).

small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 6,987,063 small entity 800 subscribers.

International Services

21. The Commission has not developed a definition of small entities applicable to licensees in the international services. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified (NEC). This definition provides that a small entity is expressed as one with $11.0 million or less in annual receipts.[56] According to the Census Bureau, there were a total of 848 communications services, NEC in operation in 1992, and a total of 775 had annual receipts of less than $9,999 million.[57] The Census report does not provide more precise data.

22. International Broadcast Stations. Commission records show that there are 20 international broadcast station licensees. We do not request nor collect annual revenue information, and thus are unable to estimate the number of international broadcast licensees that would constitute a small business under the SBA definition. However, the Commission estimates that only six international broadcast stations are subject to regulatory fee payments.

23. International Public Fixed Radio (Public and Control Stations).

There are 15 licensees in this service. We do not request nor collect annual revenue information, and thus are unable to estimate the number of international broadcast licensees that would constitute a small business under the SBA definition.

24. Fixed Satellite Transmit/Receive Earth Stations. There are approximately 4200 earth station authorizations, a portion of which are Fixed Satellite Transmit/Receive Earth Stations. We do not request nor collect annual revenue information, and thus are unable to estimate the number of the earth stations that would constitute a small business under the SBA definition.

25. Fixed Satellite Small Transmit/Receive Earth Stations. There are 4200 earth station authorizations, a portion of which are Fixed Satellite Small Transmit/Receive Earth Stations. We do not request nor collect annual revenue information, and thus are unable to estimate the number of fixed satellite transmit/receive earth stations may constitute a small business under the SBA definition.

26. Fixed Satellite Very Small Aperture Terminal (VSAT) Systems. These stations operate on a primary basis, and frequency coordination with terrestrial microwave systems is not required. Thus, a single ''blanket'' application may be filed for a specified number of small antennas and one or more hub stations. The Commission has processed 377 applications. We do not request nor collect annual revenue information, and thus are unable to estimate the number of VSAT systems that would constitute a small business under the SBA definition.

27. Mobile Satellite Earth Stations. There are two licensees. We do not request nor collect annual revenue information, and thus are unable to estimate of the number of mobile satellite earth stations that would constitute a small business under the SBA definition.

28. Radio Determination Satellite Earth Stations. There are four licensees. We do not request nor collect annual revenue information, and thus are unable to estimate of the number of radio determination satellite earth stations that would constitute a small business under the SBA definition.

29. Space Stations (Geostationary). Commission records reveal that there are 37 space station licensees. We do not request nor collect annual revenue information, and thus are unable to estimate of the number of geostationary space stations that would constitute a small business under the SBA definition.

30. Space Stations (Non-Geostationary). There are six Non-Geostationary Space Station licensees, of which only one system is operational. We do not request nor collect annual revenue information, and thus are unable to estimate of the number of non-geostationary space stations that would constitute a small business under the SBA definition.

31. Direct Broadcast Satellites. Because DBS provides subscription services, DBS falls within the SBA definition of Cable and Other Pay Television Services (SIC 4841). This definition provides that a small entity is expressed as one with $11.0 million or less in annual receipts.[58] As of December 1996, there were eight DBS licensees. However, the Commission does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees that could be impacted by these proposed rules. Although DBS service requires a great investment of capital for operation, we acknowledge that there are several new entrants in this field that may not yet have generated $11 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

Mass Media Services

32. Commercial Radio and Television Services. The proposed rules and policies will apply to television broadcasting licensees and radio broadcasting licensees.[59] The SBA defines a television broadcasting station that has $10.5 million or less in annual receipts as a small business.[60] Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services.[61] Included in this industry are

[56] 13 CFR § 120.121, SIC Code 4899.

[57] *1992 Economic Census Industry and Enterprise Receipts Size Report*, Table 2D, SIC 4899 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

[58] 13 CFR 121.201, SIC 4841.

[59] We tentatively conclude that the SBA's definition of ''small business'' greatly overstates the number of radio and television broadcast stations that are small businesses and is not suitable for purposes of determining the impact of the proposals on small television and radio stations. However, for purposes of this *Policy Statement*, we utilize the SBA's definition in determining the number of small businesses to which the proposed rules would apply, but we reserve the right to adopt a more suitable definition of ''small business'' as applied to radio and television broadcast stations or other entities subject to this *Policy Statement* and to consider further the issue of the number of small entities that are radio and television broadcasters or other small media entities in the future. *See Report and Order in MM Docket No. 93–48 (Children's Television Programming)*, 11 FCC Rcd 10660, 10737–38 (1996), 61 FR 43981 (August 27, 1996), citing 5 U.S.C. 601(3). We have pending proceedings seeking comment on the definition of and data relating to small businesses. In our *Notice of Inquiry in GN Docket No. 96–113 (Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses)*, FCC 96–216, released May 21, 1996, we requested commenters to provide profile data about small telecommunications businesses in particular services, including television, and the market entry barriers they encounter, and we also sought comment as to how to define small businesses for purposes of implementing Section 257 of the Telecommunications Act of 1996, which requires us to identify market entry barriers and to prescribe regulations to eliminate those barriers. Additionally, in our *Order and Notice of Proposed Rule Making in MM Docket No. 96–16 (In the Matter of Streamlining Broadcast EEO Rule and Policies, Vacating the EEO Forfeiture Policy Statement and Amending Section 1.80 of the Commission's Rules to Include EEO Forfeiture Guidelines)*, 11 FCC Rcd 5154 (1996), 61 FR 9964 (March 12, 1996), we invited comment as to whether relief should be afforded to stations: (1) based on small staff and what size staff would be considered sufficient for relief, *e.g.*, 10 or fewer full-time employees; (2) based on operation in a small market; or (3) based on operation in a market with a small minority work force.

[60] 13 CFR 121.201, SIC 4833.

[61] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, *1992 Census of Transportation, Communications and Utilities, Establishment and Firm Size, Series UC92–S–1*, Appendix A–9 (1995).

commercial, religious, educational, and other television stations.[62] Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials.[63] Separate establishments primarily engaged in producing taped television program materials are classified under another SIC number.[64] There were 1,509 television stations operating in the nation in 1992.[65] That number has remained fairly constant as indicated by the approximately 1,550 operating television broadcasting stations in the nation as of August, 1996.[66] For 1992,[67] the number of television stations that produced less than $10.0 million in revenue was 1,155 establishments.[68] Only commercial stations are subject to regulatory fees.

33. Additionally, the Small Business Administration defines a radio broadcasting station that has $5 million or less in annual receipts as a small business.[69] A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public.[70] Included in this industry are commercial, religious, educational, and other radio stations.[71] Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce radio program materials are similarly included.[72] However, radio stations which are separate establishments and are primarily engaged in producing radio program material are classified under another SIC number.[73] The 1992 Census indicates that 96 percent (5,861 of 6,127) radio station establishments produced less than $5 million in revenue in 1992.[74] Official Commission records indicate that 11,334 individual radio stations were operating in 1992.[75] As of August 1996, official Commission records indicate that 12,088 radio stations were operating.[76] Only commercial stations are subject to regulatory fees.

34. Thus, the NPRM adopted today will affect approximately 1,550 full power television stations; approximately 1,194 of those stations are considered small businesses,[77] and 12,088 full power radio stations, approximately 11,605 of which are small businesses.[78] These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-television or non-radio affiliated companies. There are also 1,954 low power television stations (LPTV).[79] Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the SBA definition.

Alternative Classification of Small Stations

35. An alternative way to classify small radio and television stations is the number of employees. The Commission currently applies a standard based on the number of employees in administering its Equal Employment Opportunity Rule (EEO) for broadcasting.[80] Thus, radio or television stations with fewer than five full-time employees are exempted from certain EEO reporting and record keeping requirements.[81] We estimate that the total number of broadcast stations with 4 or fewer employees is approximately 4,239.[82]

Auxiliary, Special Broadcast and Other Program Distribution Services

36. This service involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the station). The Commission has not developed a definition of small entities applicable to broadcast auxiliary licensees. Therefore, the applicable definition of small entity is the definition under the Small Business Administration (SBA) rules applicable to radio broadcasting stations (SIC 4832) and television broadcasting stations (SIC 4833).

37. There are currently 2,720 FM translators and boosters, 4,952 TV translators.[83] The FCC does not collect financial information on any broadcast facility and the Department of Commerce does not collect financial information on these auxiliary broadcast facilities. We believe, however, that most, if not all, of these auxiliary facilities could be classified as small

[62] Id. *See Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual (1987)*, at 283, which describes ''Television Broadcasting Stations'' (SIC Code 4833) as:

Establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational and other television stations. Also included here are establishments primarily engaged in television broadcasting and which produce taped television program materials.

[63] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, *1992 Census of Transportation, Communications And Utilities, Establishment and Firm Size, Series UC92–S–1,* Appendix A–9 (1995).

[64] Id. SIC 7812 (Motion Picture and Video Tape Production); SIC 7922 (Theatrical Producers and Miscellaneous Theatrical Services) (producers of live radio and television programs).

[65] FCC News Release No. 31327, January 13, 1993; Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce.

[66] FCC News Release No. 64958, September 6, 1996.

[67] Census for Communications' establishments are performed every five years ending with a ''2'' or ''7''. See Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce.

[68] The amount of $10 million was used to estimate the number of small business establishments because the relevant Census categories stopped at $9,999,999 and began at $10,000,000. No category for $10.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information.

[69] 13 CFR 121.201, SIC 4832.

[70] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce.

[71] Id.

[72] Id.

[73] Id.

[74] The Census Bureau counts radio stations located at the same facility as one establishment. Therefore, each co-located AM/FM combination counts as one establishment.

[75] FCC News Release No. 31327, January 13, 1993.

[76] FCC News Release No. 64958, September 6, 1996.

[77] We use the 77 percent figure of TV stations operating at less than $10 million for 1992 and apply it to the 1996 total of 1550 TV stations to arrive at 1,194 stations categorized as small businesses.

[78] We use the 96% figure of radio station establishments with less than $5 million revenue from the Census data and apply it to the 12,088 individual station count to arrive at 11,605 individual stations as small businesses.

[79] FCC News Release, *Broadcast Station Totals as of December 31, 1996,* No. 71831, January 21, 1997.

[80] The Commission's definition of a small broadcast station for purposes of applying its EEO rules was adopted prior to the requirement of approval by the SBA pursuant to Section 3(a) of the Small Business Act, 15 U.S.C. § 632 (a), as amended by Section 222 of the Small Business Credit and Business Opportunity Enhancement Act of 1992, Public Law 102–366, § 222(b)(1), 106 Stat. 999 (1992), as further amended by the Small Business Administration Reauthorization and Amendments Act of 1994, Public Law 103–403, § 301, 108 Stat. 4187 (1994). However, this definition was adopted after the public notice and the opportunity for comment. *See Report and Order* in Docket No. 18244, 23 FCC 2d 430 (1970), 35 FR 8925 (June 6, 1970).

[81] *See, e.g.,* 47 CFR § 73.3612 (Requirement to file annual employment reports on Form 395 applies to licensees with five or more full-time employees); First Report and Order in Docket No. 21474 *(Amendment of Broadcast Equal Employment Opportunity Rules and FCC Form 395),* 70 FCC 2d 1466 (1979), 50 FR 50329 (December 10, 1985). The Commission is currently considering how to decrease the administrative burdens imposed by the EEO rule on small stations while maintaining the effectiveness of our broadcast EEO enforcement. *Order and Notice of Proposed Rule Making in MM Docket No. 96–16 (Streamlining Broadcast EEO Rule and Policies, Vacating the EEO Forfeiture Policy Statement and Amending Section 1.80 of the Commission's Rules to Include EEO Forfeiture Guidelines),* 11 FCC Rcd 5154 (1996), 61 FR 9964 (March 12, 1996). One option under consideration is whether to define a small station for purposes of affording such relief as one with ten or fewer full-time employees.

[82] Compilation of 1994 Broadcast Station Annual Employment Reports (FCC Form 395B), Equal Opportunity Employment Branch, Mass Media Bureau, FCC.

[83] FCC News Release, *Broadcast Station Totals as of December 31, 1996,* No. 71831, January 21, 1997.

businesses by themselves. We also recognize that most translators and boosters are owned by a parent station which, in some cases, would be covered by the revenue definition of small business entity discussed above. These stations would likely have annual revenues that exceed the SBA maximum to be designated as a small business (either $5 million for a radio station or $10.5 million for a TV station). Furthermore, they do not meet the Small Business Act's definition of a ''small business concern'' because they are not independently owned and operated.[84]

38. Multipoint Distribution Service (MDS). This service involves a variety of transmitters, which are used to relay programming to the home or office, similar to that provided by cable television systems.[85] In connection with the 1996 MDS auction the Commission defined small businesses as entities who had annual average gross revenues for the three preceding years not in excess of $40 million.[86] This definition of a small entity in the context of MDS auctions has been approved by the SBA.[87] These stations were licensed prior to implementation of Section 309(j) of the Act. Licenses for new MDS facilities are now awarded to auction winners in Basic Trading Areas (BTAs) and BTA-like areas.[88] The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 BTAs. Of the 67 auction winners, 61 meet the definition of a small business. There are 1,573 previously authorized and proposed MDS stations currently licensed. Thus, we conclude that there are 1,634 MDS providers that are small businesses as deemed by the SBA and the Commission's auction rules. It is estimated, however, that only 1,145 MDS licensees are subject to regulatory fees and the number which are small businesses is unknown.

Wireless and Commercial Mobile Services

39. Cellular Licensees. Neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees. The closest applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies (SIC 4812). The most reliable source of information regarding the number of cellular services carriers nationwide of which we are aware appears to be the data that the Commission collects annually in connection with the *TRS Worksheet.*[89] According to the most recent data, 792 companies reported that they were engaged in the provision of cellular services.[90] Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of cellular services carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 792 small cellular service carriers.

40. 220 MHz Radio Services. Since the Commission has not yet defined a small business with respect to 220 MHz radio services, we will utilize the SBA's definition applicable to radiotelephone companies—i.e., an entity employing less than 1,500 persons.[91] With respect to the 220 MHz services, the Commission has proposed a two-tiered definition of small business for purposes of auctions: (1) For Economic Area (EA) licensees,[92] a firm with average annual gross revenues of not more than $6 million for the preceding three years; and (2) for regional and nationwide licensees, a firm with average annual gross revenues of not more than $15 million for the preceding three years.[93] Since this definition has not yet been approved by the SBA, we will utilize the SBA's definition applicable to radiotelephone companies. Given the fact that nearly all radiotelephone companies employ fewer than 1,500 employees,[94] with respect to the approximately 3,800 incumbent licensees in this service, we will consider them as small businesses under the SBA definition.

41. Private and Common Carrier Paging. The Commission has proposed a two-tier definition of small businesses in the context of auctioning licenses in the Common Carrier Paging and exclusive Private Carrier Paging services. Under the proposal, a small business will be defined as either (1) an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than $3 million, or (2) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than $15 million. Since the SBA has not yet approved this definition for paging services, we will utilize the SBA's definition applicable to radiotelephone companies, *i.e.,* an entity employing fewer than 1,500 persons.[95] At present, there are approximately 24,000 Private Paging licensees and 74,000 Common Carrier Paging licensees. We estimate that the majority of private and common carrier paging providers would qualify as small businesses under the SBA definition.

42. Mobile Service Carriers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to mobile service carriers, such as paging companies. The closest applicable definition under the SBA rules is for radiotelephone (wireless) companies. The most reliable source of information regarding the number of mobile service carriers nationwide of which we are aware appears to be the data that the Commission collects annually in connection with the *TRS Worksheet.* According to the most recent data, 117 companies reported that they were engaged in the provision of mobile services.[96] Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of mobile service carriers that would qualify under the SBA's definition.

[84] 15 U.S.C. § 632.

[85] For purposes of this item, MDS also includes single channel Multipoint Distribution Service (MDS) and Multipoint Distribution Service (MMDS) application and authorizations collectively.

[86] *See* 47 CFR § 1.2110 (a)(1).

[87] *Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding,* 10 FCC Rcd 9589 (1995), 60 FR 36524 (July 17, 1995).

[88] Id. A Basic Trading Area (BTA) is the geographic area by which the Multipoint Distribution Service is licensed. *See* Rand McNally *1992 Commercial Atlas and Marketing Guide,* 123rd Edition, pp. 36–39.

[89] Federal Communications Commission. CCB industry Analysis Division, *Telecommunication Industry Revenue: TRS Worksheet Data,* Tbl. 1 (Average Total Telecommunication Revenue Reported by Class of Carrier) (December 1996) (TRS Worksheet).

[90] Id.

[91] 13 CFR § 121.201, SIC 4812.

[92] Economic Area (EA) licenses refer to the 60 channels in the 172 geographic areas as defined by the Bureau of Economic Analysis, Department of Commerce. *See Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220–222 MHz Band by the Private Land Mobile Radio Service, Second Memorandum Opinion and Order and Third Notice of Proposed Rule Making,* GN Docket 93–252, 10 FCC Rcd 6880 (1995), 60 FR 26861 (May 19, 1995).

[93] Id.

[94] *See* U.S. Bureau of the Census, U.S. Department of Commerce, 1992 *Census of Transportation, Communications, and Utilities, UC92–S–1,* Subject Series, Establishment and Firm Size, Tbl. 5, Employment Size of Firms; 1992, SIC 4812 (issued May 1995).

[95] 13 CFR § 121.201, SIC 4812.

[96] Id.

Consequently, we estimate that there are fewer than 117 small entity mobile service carriers.

43. Broadband Personal Communications Service (PCS). The broadband PCS spectrum is divided into six frequency blocks designated A through F and the Commission has held auctions for each block. The Commission defined ''small entity'' for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[97] For Block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[98] These regulations defining ''small entity'' in the context of broadband PCS auctions have been approved by the SBA. No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40% of the 1,479 licenses for Blocks D, E, and F.[99] However, licenses for blocks C through F have not been awarded fully, therefore there are few, if any, small businesses currently providing PCS services. Based on this information, we conclude that the number of small broadband PCS licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small PCS providers as defined by the SBA and the Commission's auction rules.

44. Narrowband PCS. The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licensees for narrowband PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition. At present, there have been no auctions held for the major trading area (MTA) and basic trading area (BTA) narrowband PCS licenses. The Commission anticipates a total of 561 MTA licenses and 2,958 BTA licenses will be awarded in the auctions. Those auctions, however, have not yet been scheduled. Given the facts that nearly all radiotelephone companies have fewer than 1,500 employees and that no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, we assume, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

45. Rural Radiotelephone Service. The Commission has not adopted a definition of small business specific to the Rural Radiotelephone Service, which is defined in Section 22.99 of the Commission's Rules.[100] A significant subset of the Rural Radiotelephone Service is BETRS, or Basic Exchange Telephone Radio Systems (the parameters of which are defined in Sections 22.757 and 22.759 of the Commission's Rules). Accordingly, we will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing fewer than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA's definition of a small business.[101]

46. Air-Ground Radiotelephone Service. The Commission has not adopted a definition of small business specific to the Air-Ground Radiotelephone Service, which is defined in Section 22.99 of the Commission's Rules.[102] Accordingly, we will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing fewer than 1,500 persons.[103] There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA definition.

47. Specialized Mobile Radio Licensees (SMR). Pursuant to 47 CFR § 90.814(b)(1), the Commission awards bidding credits in auctions for geographic area 800 MHz and 900 MHz Specialized Mobile Radio (SMR) licenses to firms that had revenues of less than $15 million in each of the three previous calendar years. This regulation defining ''small entity'' in the context of 800 MHz and 900 MHz SMR has been approved by the SBA.[104]

48. The proposed fees in the NPRM applies to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of less than $15 million. We do know that one of these firms has over $15 million in revenues. We assume that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA.

49. The Commission recently held auctions for geographic area licenses in the 900 MHz SMR band. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. Based on this information, we conclude that the number of geographic area SMR licensees affected includes these 60 small entities.

50. Private Land Mobile Radio Licensees (PLMR). These radios are used by companies of all sizes operating in all U.S. business categories. Because of the vast array of PLMR users, the Commission has not developed nor would it be possible to develop a definition of small entities specifically applicable to PLMR users. For the purpose of determining whether a licensee is a small business as defined by the SBA, each licensee would need to be evaluated within its own business area.

51. The Commission is unable at this time to estimate the number of small businesses which could be impacted by the rules. However, the Commission's 1994 Annual Report on PLMRs[105] indicates that at the end of fiscal year 1994 there were 1,087,267 licensees operating 12,481,989 transmitters in the PLMR bands below 512 MHz. Further, because any entity engaged in a commercial activity is eligible to hold a PLMR license, these rules could potentially impact every small business in the U.S.

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[97] *See Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, Report and Order,* FCC 96–278, WT Docket No. 96–59, paras. 57–60 (released June 24, 1996), 61 FR 33859 (July 1, 1996); *see also* 47 CFR § 24.720(b).

[98] *See Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commerical Mobile Radio Service Spectrum Cap, Report and Order,* FCC 96–278, WT Docket No. 96–59, para. 60 (1996), 61 FR 33859 (July 1, 1996).

[99] FCC News, *Broadband PCS, D, E and F Block Auction Closes,* No. 71744 (released January 14, 1997).

[100] 47 CFR § 22.9.

[101] 13 CFR § 121.201, SIC 4812.

[102] Id.

[103] Id.

[104] *See Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896–901 MHz and the 935–940 MHz Bands Allotted to the Specialized Mobile Radio Pool, PR Docket No. 89–583, Second Order on Reconsideration and Seventh Report and Order,* 11 FCC Rcd 2639, 2693–702 (1995), 60 FR 48913 (September 21, 1995); *Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93–144, First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rule Making,* 11 FCC Rcd 1463 (1995), 61 FR 6212 (February 16, 1996).

[105] Federal Communications Commission, *60th Annual Report, Fiscal Year 1994* at 116.

52. Amateur Radio Service. We estimate that 10,000 applicants will apply for vanity call signs in FY 1997. All are presumed to be individuals. All other amateur licensees are exempt from payment of regulatory fees.

53. Aviation and Marine Radio Service. Small businesses in the aviation and marine radio services use a marine very high frequency (VHF) radio, any type of emergency position indicating radio beacon (EPIRB), and/or radar, a VHF aircraft radio, and/or any type of emergency locator transmitter (ELT). The Commission has not developed a definition of small entities specifically applicable to these small businesses. Therefore, the applicable definition of small entity is the definition under the Small Business Administration rules applicable to water transportation and transportation by air. This definition provides that a small entity is any entity employing less than 500 persons for water transportation, and 1,500 for transportation by air.[106] The Commission is unable at this time to make a meaningful estimate of the number of potential small businesses.

54. Most applicants for individual recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. Therefore, for purposes of our evaluations and conclusions in this FRFA, we estimate that there may be at least 712,000 potential licensees which are small businesses, as that term is defined by the SBA. We estimate, however, that only 22,250 will be subject to FY 1997 regulatory fees.

55. Microwave Video Services. Microwave services includes common carrier,[107] private operational fixed,[108] and broadcast auxiliary radio services.[109] At present, there are 22,015 common carrier licensees, approximately 61,670 private operational fixed licensees and broadcast auxiliary radio licensees in the microwave services. Inasmuch as the Commission has not yet defined a small business with respect to microwave services, we will utilize the SBA's definition applicable to radiotelephone companies—i.e., an entity with less than 1,500 persons.[110] As for estimates regarding small businesses within the broadcast service, we rely on our estimates as discussed under mass media services. Although some of these companies may have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of microwave service providers other than broadcast licensees that would qualify under the SBA's definition.

56. Public Safety Radio Services. Public Safety radio services include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services.[111] There are a total of approximately 127,540 licensees within these services. Governmental entities as well as private businesses comprise the licensees for these services. As we indicated in the introductory paragraph, all governmental entities with populations of less than 50,000 fall within the definition of a small business.[112] There are approximately 37,566 governmental entities with populations of less than 50,000.[113] All of these licensees are exempt from payment of regulatory fees.

57. Personal Radio Services. Personal radio services provide short-range, low power radio for personal communications, radio signalling and business communications not provided for in other services. These services include citizen band (CB) radio service, general mobile radio service (GMRS), radio control radio service, and family radio service (FRS).[114] Inasmuch as the CB, GMRS, and FRS licensees are individuals, no small business definition applies for these services. We are unable at this time to estimate the number of licensees that would qualify as small under the SBA's definition, however, only GMRS licensees are subject to regulatory fees.

58. Offshore Radiotelephone Service. This service operates on several UHF TV broadcast channels that are not used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico.[115] At present, there are approximately 55 licensees in this service. We are unable at this time to estimate the number of licensees that would qualify as small under the SBA's definition.

IV. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

59. With certain exceptions, the Commission's Schedule of Regulatory Fees applies to all Commission licensees and regulatees. Most licensees will be required to count the number of licenses or call signs authorized, complete and submit an FCC Form 159, ''FCC Remittance Advice,'' and pay a regulatory fee based on the number of licenses or call signs.[116] Interstate

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[106] *See* 13 CFR § 121.201, SIC Major Group Code 44—Water Transportation (4491, 4492, 4493, 4499) and 45—Transportation by Air (4522, 4581).

[107] 47 CFR § 101 *et seq* (formerly part 21 of the Commission's rules).

[108] Persons eligible under Parts 80 and 90 of the Commission's rules can use private Operational Fixed Microwave services. *See* 47 CFR §§ 80 *et seq*, 90 *et seq*. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use an operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

[109] Broadcast Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission's rules. *See* 47 CFR § 74 *et seq*. Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points, such as a main studio and an auxiliary studio. The broadcast auxiliary microwave services also include mobile TV pickups which relay signals from a remote location back to the studio.

[110] 13 CFR § 121.201, SIC 4812.

[111] With the exception of the special emergency service, these services are governed by subpart B of Part 90 of the Commission's rules. 47 CFR §§ 90.15 through 90.27. The police service includes 26,608 licensees that serve state, county, and municipal enforcement through telephony (voice), telegraphy (code) and teletype and facsimile (printed material). The fire radio service includes 22,677 licensees comprised of private volunteer or professional fire companies as well as units under governmental control. The local government service that is presently comprised of 40,512 licensees that are state, county, or municipal entities that use the radio for official purposes not covered by other public safety services. There are 7,325 licensees within the forestry service which is comprised of licensees from state departments of conservation and private forest organizations who set up communications networks among fire lookout towers and ground crews. The 9,480 state and local governments are licensed to highway maintenance service provide emergency and routine communications to aid other public safety services to keep main roads safe for vehicular traffic. The 1,460 licensees in the Emergency Medical Radio Service (EMRS) use the 39 channels allocated to this service for emergency medical service communication related to the actual delivery of emergency medical treatment. 47 CFR § § 90.15 through 90.27. The 19,478 licensees in the special emergency service include medical services, rescue organizations, veterinarians, handicapped persons, disaster relief organizations, school buses, beach patrols, establishments in isolated areas, communications standby facilities, and emergency repair of public communications facilities. 47 CFR §§ 90.33 through 90.55.

[112] 5 U.S.C. § 601(5).

[113] United States Dept. of Commerce, Bureau of the Census, *1992 Census of Governments* (1992 Census).

[114] Licensees in the Citizens Band (CB) Radio Service, General Mobile Radio Service (GMRS), Radio Control (R/C) Radio Service and Family Radio Service (FRS) are governed by subpart D, subpart A, subpart C, and subpart B, respectively, of Part 95 of the Commission's rules. 47 CFR §§ 95.401 through 95.428; §§ 95.1 through 95.181; §§ 95.201 through 95.225; 47 CFR §§ 95.191 through 95.194.

[115] These licensees are governed by subpart I of part 22 of the Commission's rules. 47 CFR § 22.1001 through 22.1037.

[116] The following categories are exempt from the Commission's Schedule of Regulatory Fees: Amateur radio licensees (except applicants for vanity call signs) and operators in other non-licensed services (e.g., Personal Radio, part 15, ship and aircraft). Governments and non-profit (exempt under Section 501(c) of the Internal Revenue Code)

Continued

telephone service providers must compute their annual regulatory fee based on their adjusted gross interstate revenue using information they already supply to the Commission in compliance with the TRS Fund, and they must complete and submit the FCC Form 159. Compliance with the fee schedule will require some licensees to tabulate the number of units (e.g., cellular telephones, pagers, cable TV subscribers) they have in service, complete and submit an FCC Form 159. Licensees ordinarily will keep a list of the number of units they have in service as part of their normal business practices. No additional outside professional skills are required to complete the FCC Form 159, and it can be completed by the employees responsible for an entity's business records.

60. Each licensee must submit the FCC Form 159 to the Commission's lockbox bank after computing the number of units subject to the fee. As an option, licensees are permitted to file electronically or on computer diskette to minimize the burden of submitting multiple copies of the FCC Form 159. Although not mandatory, the latter procedure may require additional technical skills. Licensees who pay small fees in advance supply fee information as part of their application and do not need to use the FCC Form 159.

61. Licensees and regulatees are advised that failure to submit the required regulatory fee in a timely manner will subject the licensee or regulatee to a late payment fee of an additional 25% in addition to the required fee.[117] Until payment is received, no new or pending applications will be processed, and existing authorizations may be subject to rescission.[118] Further, in accordance with the Debt Collection Improvement Act of 1996, federal agencies may bar a person or entity from obtaining a federal loan or loan insurance guarantees if that person or entity fails to pay a delinquent debt owed to any federal agency.[119] Thus, debts owed to the Commission may result in a person or entity being denied a federal loan or loan guarantee pending before another federal agency until such obligations are paid.[120]

62. The Commission's rules currently make provision for relief in exceptional circumstances. Persons or entities that believe they have been placed in the wrong regulatory fee category or are experiencing extraordinary and compelling financial hardship, upon a showing that such circumstances override the public interest in reimbursing the Commission for its regulatory costs, may request a waiver, reduction or deferment of payment of the regulatory fee.[121] However, timely submission of the required regulatory fee must accompany requests for waivers or reductions. This will avoid any late payment penalty if the request is denied. The fee will be refunded if the request is granted. In exceptional and compelling instances (where payment of the regulatory fee along with the waiver or reduction request could result in reduction of service to a community or other financial hardship to the licensee), the Commission will accept a petition to defer payment along with a waiver or reduction request.

V. Significant Alternatives To Proposed Rule Which Minimize Significant Economic Impact on Small Entities and Accomplish Stated Objectives

63. *The Omnibus Consolidated Appropriation Act,* Public Law 104–208, requires the Commission to revise its Schedule of Regulatory Fees in order to recover the amount of regulatory fees that Congress, pursuant to Section 9(a) of the Communications Act, as amended, has required it to collect for Fiscal Year (FY) 1997. *See! 47 U.S.C. § 159 (a). We seek comment on the proposed methodology for implementing these statutory requirements and any other potential impact of these proposals on small business entities.*

64. With the introduction of actual cost accounting data for computation of regulatory fees, we found that some fees which were very small in previous years would have increased dramatically. The methodology proposed in this *NPRM* minimizes this impact by limiting the amount of increase and shifting costs to other services which, for the most part, are larger entities. We seek comment on this proposal.

65. Conversely, we have found that our costs for regulating commercial microwave (domestic public fixed) services are significantly lower than previously thought. We are, therefore, proposing to eliminate the annual ''large'' regulatory fee for domestic public fixed services and combining this fee category with the private microwave service with a single ''microwave'' designation. The impact on domestic public fixed licensees will be a reduction of the fee to a ''small'' up front payment for the entire license term applied only to new, modification and renewal applicants. Current domestic public fixed licensees would be exempt from payment of a regulatory fee until such time as they apply for a modification or renewal of their license.

66. This item also solicits alternative methodologies for assessing fees to recover the regulatory costs attributable to AM and FM radio stations. The radio industry has requested relief for small stations, and we currently have received two alternative proposals which are being evaluated. One would segment licensees by Arbitron radio markets in addition to station class.[122] The other proposal would segment licensees by service area population in addition to station class.[123] The impact of adoption of either alternative proposal is unknown at this time, although either proposal could be expected to result in lower fees for smaller, less powerful stations relative to larger, more powerful stations in the same radio market; or stations potentially serving a larger population. We seek comment on these alternative proposals and the impact they may have on small entities.

67. Several categories of licensees and regulatees are exempt from payment of regulatory fees. See Footnote 3 supra.

VI. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

68. None.

Attachment B—Sources of Payment Unit Estimates for FY 1997

In order to calculate individual service fees for FY 1997, we adjusted FY 1996 payment units for each service to

entities are exempt from payment of regulatory fees and need not submit payment. Non-commercial educational broadcast licensees are exempt from regulatory fees as are licensees of auxiliary broadcast services such as low power auxiliary stations, television auxiliary service stations, remote pickup stations and aural broadcast auxiliary stations where such licenses are used in conjunction with commonly owned non-commercial educational stations. Emergency Alert System licenses for auxiliary service facilities are also exempt as are instructional television fixed service licensees. Regulatory fees are automatically waived for the licensee of any translator station that: (1) is not licensed to, in whole or in part, and does not have common ownership with, the licensee of a commercial broadcast station; (2) does not derive income from advertising; and (3) is dependent on subscriptions or contributions from members of the community served for support. Receive only earth station permittees are exempt from payment of regulatory fees. A regulatee will be relieved of its fee payment requirement if its total fee due, including all categories of fees for which payment is due by the entity, amounts to less than $10.

[117] 47 U.S.C. § 1.1164(a).

[118] 47 U.S.C. § 1.1164(c).

[119] Public Law 104–134, 110 Stat. 1321 (1996).

[120] 31 U.S.C. § 7701(c)(2)(B).

[121] 47 U.S.C. § 1.1166.

[122] See discussion of Montana Broadcasters Association Comments at NPRM paragraphs 29–32 supra.

[123] See discussion of NAB Comments at NPRM paragraphs 33–36 supra.

more accurately reflect expected FY 1997 payment liabilities. We obtained our updated estimates through a variety of means. For example, we used Commission licensee data bases, actual prior year payment records and industry and trade association projections when available. We tried to obtain verification for these estimates from multiple sources and, in all cases, we compared FY 1997 estimates with actual FY 1996 payment units to ensure that our revised estimates were reasonable. Where it made sense, we adjusted and/or rounded our final estimates to take into consideration the fact that certain variables that impact on the number of payment units cannot yet be estimated exactly. These include an unknown number of waivers and/or exemptions that may occur in FY 1997 and the fact that, in many services, the number of actual licensees or station operators fluctuates from time to time due to economic, technical or other reasons. Therefore, when we note, for example, that our estimated FY 1997 payment units are based on FY 1996 actual payment units, it does not necessarily mean that our FY 1997 projection is *exactly* the same number as FY 1996. It means that we have either rounded the FY 1997 number or adjusted it slightly to account for these variables.

Fee category	Sources of payment unit estimates
Land Mobile (All), Microwave, IVDS[124], Marine (Ship & Coast), Aviation (Aircraft & Ground), GMRS, Amateur Vanity Call Signs, Domestic Public Fixed.	Based on Wireless Telecommunications Bureau (WTB) projections of new applications and renewals taking into consideration existing Commission licensee data bases. Aviation (Aircraft) and Marine (Ship) estimates have been adjusted to take into consideration proposals to license portions of these services on a voluntary basis.
CMRS Mobile Services (incl. Cellular/Public Mobile Radio Services and Two Way Paging Services)[125].	Based on actual FY 1996 payment units adjusted to take into consideration industry estimates of growth between FY 1996 and FY 1997 and Wireless Telecommunications Bureau projections of new applications and average number of mobile units associated with each application.
CMRS One Way Paging Services	Based on industry estimates of the number of pager units in operation.
AM/FM Radio Stations	Based on actual FY 1996 payment units.
UHF/VHF Television Stations	Based on actual FY 1996 payment units.
AM/FM/TV Construction Permits	Based on actual FY 1996 payment units.
LPTV, Translators and Boosters	Based on actual FY 1996 payment units.
Auxiliaries	Based on actual FY 1996 payment units.
MDS/MMDS	Based on actual FY 1996 payment units.
Cable Antenna Relay Service (CARS)	Based on actual FY 1996 payment units.
Cable Television System Subscribers	Based on Cable Services Bureau and industry estimates of subscribership.
IXCs/LECs,CAPs, Other Service Providers	Based on actual FY 1996 interstate revenues associated with contributions to the Telecommunications Relay System (TRS) Fund, adjusted to take into consideration FY 1997 revenue growth in this industry as estimated by the Common Carrier Bureau.
Earth Stations	Based on actual FY 1996 payment units.
Space Stations & LEOs	Based on International Bureau licensee data bases.
International Bearer Circuits	Based on International Bureau estimate.
International HF Broadcast Stations, International Public Fixed Radio Service.	Based on actual FY 1996 payment units.

[124] The Wireless Telecommunications Bureau's staff advises that they do not anticipate receiving any applications for IVDS in FY 1997. Therefore, since there is no volume, there will be no regulatory fee in the IVDS category for FY 1997.

[125] Licensees in the PMRS were given until August of 1996 to decide whether to convert to CMRS. For FY 1997, we anticipate a substantial increase in the volume of licensees in the CMRS categories and a corresponding decrease in the number of licensees remaining in the PMRS category.

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Attachment C

CALCULATION OF REVENUE REQUIREMENTS

Fee Category	FY 1997 Payment Units	(times) FY 1996 Fee	(times) Payment Years	(equals) Computed FY 1997 Revenue Requirement	Pro-Rated Revenue Requirement
LM (220 MHz, >470 MHZ-Base, SMRS)	14,175	7	5	496,125	554,370
Private Microwave	5,350	7	10	374,500	418,466
IVDS	0	7	5	0	0
Marine (Ship)	18,750	3	10	562,500	628,538
GMRS/Other LM	81,500	3	5	1,222,500	1,366,022
Aviation (Aircraft)	3,500	3	10	105,000	117,327
Marine (Coast)	1,340	3	5	20,100	22,460
Aviation (Ground)	1,610	3	5	24,150	26,985
Amateur Vanity Call Signs	10,000	3	10	300,000	335,220
AM Class A	110	1,250	1	137,500	153,643
AM Class B	1,353	690	1	933,570	1,043,171
AM Class C	1,128	280	1	315,840	352,920
AM Class D	1,375	345	1	474,375	530,067
AM Construction Permits	38	140	1	5,320	5,945
FM Classes C,C1,C2,B	2,404	1,250	1	3,005,000	3,357,787
FM Classes A,B1,C3	3,140	830	1	2,606,200	2,912,168
FM Construction Permits	307	690	1	211,830	236,699
Satellite TV	101	690	1	69,690	77,872
Satellite TV Construction Permit	7	250	1	1,750	1,955
VHF Markets 1-10	43	32,000	1	1,376,000	1,537,542
VHF Markets 11-25	64	26,000	1	1,664,000	1,859,354
VHF Markets 26-50	78	17,000	1	1,326,000	1,481,672
VHF Markets 51-100	137	9,000	1	1,233,000	1,377,754
VHF Remaining Markets	225	2,500	1	562,500	628,538
VHF Construction Permits	5	5,550	1	27,750	31,008
UHF Markets 1-10	89	25,000	1	2,225,000	2,486,215
UHF Markets 11-25	86	20,000	1	1,720,000	1,921,928
UHF Markets 26-50	106	13,000	1	1,378,000	1,539,777
UHF Markets 51-100	163	7,000	1	1,141,000	1,274,953
UHF Remaining Markets	165	2,000	1	330,000	368,742
UHF Construction Permits	50	4,425	1	221,250	247,225
Auxiliaries	20,000	35	1	700,000	782,180
International HF Broadcast	6	280	1	1,680	1,877
LPTV/Translators/Boosters	2,200	190	1	418,000	467,073
CARS	1,640	325	1	533,000	595,574
Cable Systems	65,000,000	0.55	1	35,750,000	39,947,050
IXC, LECs, CAPS, Others	59,685,000,000	0.00098	1	58,491,300	65,358,179
CMRS Mobile Services (Cellular/Public Mobile)	46,000,000	0.17	1	7,820,000	8,738,068
CMRS - One Way Paging	28,800,000	0.02	1	576,000	643,622
Domestic Public Fixed/Commercial Microwave	18,845	155	1	2,920,975	3,263,897
MDS/MMDS	1,144	155	1	177,320	198,137
International Circuits	164,000	4	1	656,000	733,014
International Public Fixed	15	225	1	3,375	3,771
Earth Stations	2,500	370	1	925,000	1,033,595
Space Stations (Geosynchronous)	41	70,575	1	2,893,575	3,233,281
Space Stations (Low Earth Orbit)	1	97,725	1	97,725	109,198
INTELSAT/INMARSAT Signatory	2	233,425	1	466,850	521,658
****** Total Estimated Revenue Collected				136,501,250	152,526,497
****** Total Revenue Requirement				152,523,000	152,523,000
Difference				(16,021,750)	3,497

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Attachment D

CALCULATION OF REGULATORY COSTS

Fee Category	Actual FY 1996 Regulatory Costs	Overhead & Other Indirect Pro Rated	Total Costs With Overhead & Other Indirect Pro Rated	Total Costs Pro-Rated To $152 Million**	Adjusted Pro-Rated Costs***
LM (220 MHz, >470 MHZ-Base, SMRS)	536,985	209,929	746,914	791,520	791,520
Private Microwave	897,318	350,797	1,248,116	1,322,653	1,322,653
IVDS	325,842	127,385	453,227	480,294	480,294
Marine (Ship)	4,010,683	1,567,935	5,578,618	5,911,773	5,911,773
GMRS/Other LM	4,534,058	1,772,543	6,306,601	6,683,231	6,683,231
Aviation (Aircraft)	633,302	247,583	880,885	933,492	933,492
Marine (Coast)	496,912	193,872	689,784	730,978	730,978
Aviation (Ground)	322,995	126,271	449,266	476,097	476,097
Amateur Vanity Call Signs	166,171	64,963	231,134	244,937	244,937
AM Radio	3,107,681	1,214,916	4,322,597	4,580,742	
AM Class A					2,117,100
AM Class B					1,167,728
AM Class C					474,686
AM Class D					582,864
AM Construction Permits					237,343
FM Radio	5,734,251	2,241,746	7,975,997	8,452,323	
FM Classes C,C1,C2,B					3,803,545
FM Classes A,B1,C3					2,535,697
FM Construction Permits					2,113,081
Satellite TV					75,870
Satellite TV Construction Permit					27,489
VHF Television	3,660,252	1,430,938	5,091,190	5,395,236	
VHF Markets 1-10					1,856,640
VHF Markets 11-25					1,508,520
VHF Markets 26-50					986,340
VHF Markets 51-100					522,180
VHF Remaining Markets					145,050
VHF Construction Permits					322,011
UHF Television	2,549,806	996,820	3,546,627	3,758,431	
UHF Markets 1-10					1,296,400
UHF Markets 11-25					1,038,720
UHF Markets 26-50					675,168
UHF Markets 51-100					363,522
UHF Remaining Markets					103,872
UHF Construction Permits					229,817
Auxiliaries	242,897	94,958	337,856	358,032	358,032
International HF Broadcast	211,016	82,495	293,511	311,039	432,682
LPTV/Translators/Boosters	258,297	100,978	359,275	380,731	380,729
CARS	56,147	21,950	78,098	82,762	82,761
Cable Systems	18,871,818	7,377,741	26,249,559	27,817,183	27,817,183
IXC, LECs, CAPS, Others	37,118,528	14,511,102	51,629,630	54,712,952	54,712,952
CMRS Mobile Services (Cellular/Public Mobile	8,656,765	3,384,272	12,041,038	12,760,129	12,760,129
CMRS - One Way Paging	649,651	253,974	903,625	957,590	957,590
Domestic Public Fixed/Commercial Microwave	61,900	24,199	86,099	91,241	91,241
MDS/MMDS	798,729	312,255	1,110,984	1,177,332	1,177,332
International Circuits	4,766,610	1,863,456	6,630,066	7,026,013	3,922,900
International Public Fixed	22,621	8,844	31,465	33,344	100,969
Earth Stations	176,173	68,873	245,046	259,681	1,413,427
Space Stations (Geosynchronous)	4,596,437	1,796,929	6,393,367	6,775,179	5,047,953
Space Stations (Low Earth Orbit)	4,451	1,740	6,191	6,561	2,408,595
INTELSAT/INMARSAT Signatory	7,441	2,909	10,351	10,969	1,096,127
Overhead & Other Indirect Costs	40,452,376				
****** Total	143,927,117	40,452,374	143,927,115	152,522,443	152,522,289
****** Total Revenue Requirement	152,523,000		152,523,000	152,523,000	152,523,000
Difference	(8,595,883)		(8,595,885)	(557)	(711)

** 1.0597 factor applied

*** The pro rated costs shown in the previous column needed to be adjusted to accurately reflect full-year costs attributable to each international fee category. This was necessary because certain cost accounting fee codes associated with international activities were utilized for only a small portion of FY 1996. This resulted in a skewed allocation of costs. Actual activity FTEs were utilized to make this adjustment. In making these adjustments to international fee costs, overall costs attributable to international activities did not change. Additionally, adjustments were made in this column to sub-allocate actual TV and radio costs to markets and station class, respectively. This was accomplished on a proportional basis by the same ratios between the markets and classes as those which existed in the FY 1996 regulatory fees.

Note: Columns may not add due to rounding.

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Attachment E

CALCULATION OF FY 1997 REGULATORY FEES

Fee Category	Pro-Rated Revenue Requirement	Adjusted Activity Costs	Costs vs. Revenue Requirement Difference	Pro-Rated Revenue Requirement Plus 25% Ceiling	Round 1 Target Revenue	Round 1 Adjustable Target Revenue	Round 1 Pro-Rated Target Revenue**	Round 2 Target Revenue	Round 2 Adjustable Target Revenue	Round 2 Pro-Rated Target Revenue***	Computed New FY 1997 Regulatory Fee	Rounded New FY 1997 Regulatory Fee	Expected FY 1997 Revenue
LM (220 MHz, >470 MHZ-Base, SMRS)	554,370	791,520	42.78%	692,963	692,963		692,963	692,963		692,963	10	10	708,750
Private Microwave	418,466	1,322,653	216.07%	523,083	523,083		523,083	523,083		523,083	10	10	535,000
IVDS	0	480,294		0	0		0	0		0			
Marine (Ship)	628,538	5,911,773	840.56%	785,673	785,673		785,673	785,673		785,673	4	5	937,500
GMRS/Other LM	1,366,022	6,683,231	389.25%	1,707,528	1,707,528		1,707,528	1,707,528		1,707,528	4	5	2,037,500
Aviation (Aircraft)	117,327	933,492	695.63%	146,659	146,659		146,659	146,659		146,659	4	5	175,000
Marine (Coast)	22,460	730,978	3154.58%	28,075	28,075		28,075	28,075		28,075	4	5	33,500
Aviation (Ground)	26,985	476,097	1664.30%	33,731	33,731		33,731	33,731		33,731	4	5	40,250
Amateur Vanity Call Signs	335,220	244,937	-26.93%	419,025	244,937	244,937	313,176	313,176	313,176	316,841	3	5	500,000
AM Class A	153,643	2,117,100	1277.93%	192,054	192,054		192,054	192,054		192,054	1,746	1,750	192,500
AM Class B	1,043,171	1,167,728	11.94%	1,303,964	1,167,728	1,167,728	1,493,057	1,303,964		1,303,964	964	965	1,319,155
AM Class C	352,920	474,686	34.50%	441,150	441,150		441,150	441,150		441,150	391	390	439,920
AM Class D	530,067	583,864	10.15%	662,584	583,864	583,864	746,529	662,584		662,584	482	480	749,375
AM Construction Permits	5,945	237,343	3892.31%	7,431	7,431		7,431	7,431		7,431	196	195	7,410
FM Classes C,C1,C2,B	3,357,787	3,803,545	13.28%	4,197,234	3,803,545	3,803,545	4,863,213	4,197,234		4,197,234	1,746	1,750	4,207,000
FM Classes A,B1,C3	2,912,168	2,535,697	-12.93%	3,640,210	2,535,697	2,535,697	3,242,142	3,242,142	3,242,142	3,280,075	1,045	1,050	3,611,000
FM Construction Permits	236,699	2,113,081	792.73%	295,874	295,874		295,874	295,874		295,874	964	965	313,625
Satellite TV	77,872	75,870	-2.57%	97,340	75,870	75,870	97,007	97,007	97,007	98,142	972	975	98,475
Satellite TV Construction Permit	1,955	27,489	1306.09%	2,444	2,444		2,444	2,444		2,444	349	350	2,450
VHF Markets 1-10	1,537,542	1,856,640	20.75%	1,921,928	1,856,640	1,856,640	2,373,900	1,921,928		1,921,928	44,696	44,700	1,922,100
VHF Markets 11-25	1,859,354	1,508,520	-18.87%	2,324,193	1,508,520	1,508,520	1,928,794	1,928,794	1,928,794	1,951,361	30,490	30,500	1,944,000
VHF Markets 26-50	1,481,672	986,340	-33.43%	1,852,090	986,340	986,340	1,261,134	1,261,134	1,261,134	1,275,890	16,358	16,360	1,271,400
VHF Markets 51-100	1,377,754	522,180	-62.10%	1,722,193	522,180	522,180	667,659	667,659	667,659	675,471	4,930	4,925	671,300
VHF Remaining Markets	628,538	145,050	-76.92%	785,673	145,050	145,050	185,461	185,461	185,461	187,631	834	835	186,750
VHF Construction Permits	31,008	322,011	938.48%	38,760	38,760		38,760	38,760		38,760	7,752	7,750	38,750
UHF Markets 1-10	2,486,215	1,298,400	-47.78%	3,107,769	1,298,400	1,298,400	1,660,134	1,660,134	1,660,134	1,679,558	18,871	18,875	1,673,200
UHF Markets 11-25	1,921,928	1,038,720	-45.95%	2,402,410	1,038,720	1,038,720	1,328,107	1,328,107	1,328,107	1,343,646	15,624	15,625	1,337,300
UHF Markets 26-50	1,539,777	675,168	-56.15%	1,924,721	675,168	675,168	863,270	863,270	863,270	873,370	8,239	8,250	869,200
UHF Markets 51-100	1,274,953	363,522	-71.49%	1,593,691	363,522	363,522	464,799	464,799	464,799	470,237	2,885	2,875	468,625
UHF Remaining Markets	368,742	103,872	-71.83%	460,928	103,872	103,872	132,811	132,811	132,811	134,365	814	815	133,650
UHF Construction Permits	247,225	229,817	-7.04%	309,031	229,817	229,817	293,844	293,844	293,844	297,282	5,946	5,950	296,250
Auxiliaries	782,180	358,032	-54.23%	977,725	358,032	358,032	457,780	457,780	457,780	463,136	23	25	500,000
International HF Broadcast	1,877	432,682	22951.78%	2,346	2,346		2,346	2,346		2,346	391	390	2,340
LPTV/Translators/Boosters	467,073	380,729	-18.49%	583,841	380,729	380,729	486,800	486,800	486,800	492,496	224	225	495,000
CARS	595,574	82,761	-86.10%	744,468	82,761	82,761	105,818	105,818	105,818	107,056	65	65	106,600
Cable Systems	39,947,050	27,817,183	-30.36%	49,933,813	27,817,183	27,817,183	35,567,050	35,567,050	35,567,050	35,983,185	0.55	0.55	35,750,000
IXC, LECs, CAPS, Others	65,358,179	54,712,952	-16.29%	81,697,724	54,712,952	54,712,952	69,955,980	69,955,980	69,955,980	70,774,465	0.00119	0.00119	70,428,300
CMRS Mobile Services (Cellular/Public M	8,738,068	12,760,129	46.03%	10,922,585	10,922,585		10,922,585	10,922,585		10,922,585	0.24	0.24	11,040,000
CMRS - One Way Paging	643,622	957,590	48.78%	804,528	804,528		804,528	804,528		804,528	0.03	0.03	864,000
Domestic Public Fixed/Commercial Microv	3,263,897	91,241	-97.20%	4,079,871	91,241	91,241	116,661	116,661	116,661	118,026	6	5	94,225
MDS/MMDS	198,137	1,177,332	494.20%	247,671	247,671		247,671	247,671		247,671	216	215	245,960
International Circuits	733,014	3,922,980	435.18%	916,268	916,268		916,268	916,268		916,268	6	5	820,000
International Public Fixed	3,771	100,959	2577.25%	4,714	4,714		4,714	4,714		4,714	314	315	4,725
Earth Stations	1,033,595	1,413,427	36.75%	1,291,994	1,291,994		1,291,994	1,291,994		1,291,994	517	515	1,287,500
Space Stations (Geosynchronous)	3,233,281	5,047,953	56.12%	4,041,601	4,041,601		4,041,601	4,041,601		4,041,601	98,576	98,575	4,041,575
Space Stations (Low Earth Orbit)	109,198	2,408,595	2105.71%	136,498	136,498		136,498	136,498		136,498	136,498	136,500	136,500
INTELSAT/INMARSAT Signatory	521,658	1,096,127	110.12%	652,073	652,073		652,073	652,073		652,073	326,036	326,025	652,050
****** Total Estimated Revenue Collected	152,526,497	152,522,290		190,658,121	124,498,467	100,582,768	152,520,826	151,129,837	119,128,429	152,523,639			153,189,710
****** Total Revenue Requirement	152,523,000	152,523,000		152,523,000	152,523,000		152,523,000	152,523,000		152,523,000			152,523,000
Difference	3,497	(710)		38,135,121	(28,024,533)		(2,174)	(1,393,163)		639			666,710

** 1.2786 factor applied

***1.0117 factor applied

Attachment F—FY 1997 Schedule of Regulatory Fees

Fee category	Annual regulatory fee
PMRS (per license) (Formerly Land Mobile—Exclusive Use at 220–222 MHz, above 470 MHz, Base Station and SMRS) (47 CFR Part 90)	10
Microwave (per license) (47 CFR Part 101)	10
Interactive Video Data Service (per license) (47 CFR Part 95)	[1]
Marine (Ship) (per station) (47 CFR Part 80)	5
Marine (Coast) (per license) (47 CFR Part 80)	5
General Mobile Radio Service (per license) (47 CFR Part 95)	5
Land Mobile (per license) (all stations not covered by PMRS and CMRS)	5
Aviation (Aircraft) (per station) (47 CFR Part 87)	5
Aviation (Ground) (per license) (47 CFR Part 87)	5
Amateur Vanity Call Signs (per call sign) (47 CFR Part 97)	5
CMRS Mobile Services (per unit) (47 CFR Parts 20, 22, 24, 80 and 90)	.24
CMRS One-Way Paging (per unit) (47 CFR Parts 20, 22 and 90)	.03
Multipoint Distribution Services (per call sign) (47 CFR Part 21)	215
AM Radio (47 CFR Part 73):	
Class A	1,750
Class B	965
Class C	390
Class D	480
Construction Permits	195
FM Radio (47 CFR Part 73):	
Classes C, C1, C2, B	1,750
Classes A, B1, C3	1,050
Construction Permits	965
TV (47 CFR Part 73) VHF Commercial:	
Markets 1–10	44,700
Markets 11–25	30,500
Markets 26–50	16,350
Markets 51–100	4,925
Remaining Markets	835
Construction Permits	7,750
TV (47 CFR Part 73) UHF Commercial:	
Markets 1–10	18,875
Markets 11–25	15,625
Markets 26–50	8,250
Markets 51–100	2,875
Remaining Markets	815
Construction Permits	5,950
Satellite Television Stations (All Markets)	975
Construction Permits—Satellite Television Stations	350
Low Power TV, TV/FM Translators & Boosters (47 CFR Part 74)	225
Broadcast Auxiliary (47 CFR Part 74)	25
Cable Antenna Relay Service (47 CFR Part 78)	65
Cable Television Systems (per subscriber) (47 CFR Part 76)	.55
Interstate Telephone Service Providers (per revenue dollar)	.00119
Earth Stations (47 CFR Part 25)	515
Space Stations (per operational station in geosynchronous orbit) (47 CFR Part 25) also includes Direct Broadcast Satellite Service (per operational station) (47 CFR Part 100)	98,575
Low Earth Orbit Satellite (per operational system) (47 CFR Part 25)	136,500
INMARSAT/INTELSAT Signatory (per signatory)	326,025
International Circuits (per active 64KB circuit)	5
International Public Fixed (per call sign) (47 CFR Part 23)	315
International (HF) Broadcast (47 CFR Part 73)	390

[1] No fee.

Attachment G—Comparison Between FY 1996 and FY 1997 Proposed Regulatory Fees

Fee category	Annual regulatory fee FY 1996	NPRM proposed fee FY 1997
PMRS (per license) (Formerly Land Mobile-Exclusive Use at 220–222 Mhz, above 470 Mhz, Base Station and SMRS) (47 CFR Part 90)	7	10
Microwave (per license) (47 CFR Part 101)	7	10
Interactive Video Data Service (per license) (47 CFR Part 95)	7	[1]

Fee category	Annual regulatory fee FY 1996	NPRM proposed fee FY 1997
Marine (Ship) (per station) (47 CFR Part 80)	3	5
Marine (Coast) (per license) (47 CFR Part 80)	3	5
General Mobile Radio Service (per license) (47 CFR Part 95)	3	5
Land Mobile (per license) (all stations not covered by PMRS and CMRS)	3	5
Aviation (Aircraft) (per station) (47 CFR Part 87)	3	5
Aviation (Ground) (per license) (47 CFR Part 87)	3	5
Amateur Vanity Call Signs (per call sign) (47 CFR Part 97)	3	5
CMRS Mobile Services (per unit) (47 CFR Parts 20, 22, 24, 80 and 90)	.17	.24
CMRS One-Way Paging (per unit) (47 CFR Parts 20, 22, and 90)	.02	.03
Domestic Public Fixed Radio	155	([2])
Multipoint Distribution Services (per call sign) (47 CFR Part 21)	155	215
AM Radio (47 CFR Part 73):		
Class A	1,250	1,750
Class B	690	965
Class C	280	390
Class D	345	480
Construction Permits	140	195
FM Radio (47 CFR Part 73):		
Classes C, C1, C2, B	1,250	1,750
Classes A, B1, C3	830	1,050
Construction Permits	690	965
TV (47 CFR Part 73) VHF Commercial:		
Markets 1–10	32,000	44,700
Markets 11–25	26,000	30,500
Markets 26–50	17,000	16,350
Markets 51–100	9,000	4,925
Remaining Markets	2,500	835
Construction Permits	5,550	7,750
TV (47 CFR Part 73) UHF Commercial:		
Markets 1–10	25,000	18,875
Markets 11–25	20,000	15,625
Markets 26–50	13,000	8,250
Markets 51–100	7,000	2,875
Remaining Markets	2,000	815
Construction Permits	4,425	5,950
Satellite Television Stations (All Markets)	690	975
Construction Permits—Satellite Television Stations	250	350
Low Power TV, TV/FM Translators & Boosters (47 CFR Part 74)	190	225
Broadcast Auxiliary (47 CFR Part 74)	35	25
Cable Antenna Relay Service (47 CFR Part 78)	35	65
Earth Stations (47 CFR Part 25)	370	515
Cable Television Systems (per subscriber) (47 CFR Part 76)	.55	.55
Interstate Telephone Service Providers (per revenue dollar)	.00098	.00119
Space Stations (per operational station in geosynchronous orbit) (47 CFR Part 25) also includes Direct Broadcast Satellite Service (per operational station) (47 CFR Part 100)	70,575	98,575
Low Earth Orbit Satellite (per operational system) (47 CFR Part 25)	97,725	136,500
INMARSAT/INTELSAT Signatory (per signatory)	233,425	326,025
International Circuits (per active 64KB circuit)	4	5
International Public Fixed (per call sign) (47 CFR Part 23)	225	315
International (HF) Broadcast (47 CFR Part 73)	280	390

[1] No fee.
[2] See microwave.

Attachment H—Detailed Guidance on Who Must Pay Regulatory Fees

1. The guidelines below provide an explanation of regulatory fee categories established by the Schedule of Regulatory Fees in section 9 (g) of the Communications Act, 47 U.S.C. § 159(g) as modified in the instant *Report and Order*. Where regulatory fee categories need interpretation or clarification, we have relied on the legislative history of section 9, our own experience in establishing and regulating the Schedule of Regulatory Fees for Fiscal Years (FY) 1994 and 1995 and the services subject to the fee schedule, and the comments of the parties in our proceeding to adopt fees for FY 1995. The categories and amounts set out in the schedule have been modified to reflect changes in the number of payment units, additions and changes in the services subject to the fee requirement and the benefits derived from the Commission's regulatory activities, and to simplify the structure of the schedule. The schedule may be similarly modified or adjusted in future years to reflect changes in the Commission's budget and in the services regulated by the Commission. *See* 47 U.S.C. § 159(b)(2), (3).

2. *Exemptions.* Governments and nonprofit entities are exempt from paying regulatory fees and should not submit payment. A nonprofit entity may be asked to submit a current IRS Determination Letter documenting that it is exempt from taxes under Section 501 of the Internal Revenue Code or the certification of a governmental authority attesting to its nonprofit status. The governmental exemption applies even where the government-owned or community-owned facility is in

competition with a commercial operation. Other specific exemptions are discussed below in the descriptions of other particular service categories.

1. Private Wireless Radio Services

3. Two levels of statutory fees were established for the Private Wireless Radio Services—exclusive use services and shared use services. Thus, licensees who generally receive a higher quality communication channel due to exclusive or lightly shared frequency assignments will pay a higher fee than those who share marginal quality assignments. This dichotomy is consistent with the directive of Section 9, that the regulatory fees reflect the benefits provided to the licensees. *See* 47 U.S.C. § 159(b)(1)(A). In addition, because of the generally small amount of the fees assessed against Private Wireless Radio Service licensees, applicants for new licenses and reinstatements and for renewal of existing licenses are required to pay a regulatory fee covering the entire license term, with only a percentage of all licensees paying a regulatory fee in any one year. Applications for modification or assignment of existing authorizations do not require the payment of regulatory fees. The expiration date of those authorizations will reflect only the unexpired term of the underlying license rather than a new license term.

a. Exclusive Use Services

4. *Private Mobile Radio Services (PMRS) (Formerly Land Mobile Services):* Regulatees in this category include those authorized under Part 90 of the Commission's Rules to provide limited access Wireless Radio service that allows high quality voice or digital communications between vehicles or to fixed stations to further the business activities of the licensee. These services, using the 220–222 MHz band and frequencies at 470 MHz and above, may be offered on a private carrier basis in the Specialized Mobile Radio Services (SMRS).[126] For FY 1997, we are proposing that PMRS licensees will pay a $10 annual regulatory fee per license, payable for an entire five or ten year license term at the time of application for a new, renewal, or reinstatement license.[127] The total regulatory fee due is either $50 for a license with a five year term or $100 for a license with a 10 year term.

5. *Microwave Services:* These services include private and commercial microwave systems and private and commercial carrier systems authorized under Part 101 of the Commission's Rules to provide telecommunications services between fixed points on a high quality channel of communications. Microwave systems are often used to relay data and to control railroad, pipeline, and utility equipment. Commercial systems typically are used for video or data transmission or distribution. For FY 1997, we are proposing that Microwave licensees will pay a $10 annual regulatory fee per license, payable for an entire ten year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is $100 for the ten year license term.

6. *Interactive Video Data Service (IVDS):* The IVDS is a two-way, point-to-multi-point radio service allocated high quality channels of communications and authorized under Part 95 of the Commission's Rules. The IVDS provides information, products, and services, and also the capability to obtain responses from subscribers in a specific service area. The IVDS is offered on a private carrier basis. The Commission does not anticipate receiving any applications in the IVDS during FY 1997. Therefore, for FY 1997, we are proposing that there be no regulatory fee established for IVDS licensees.

b. Shared Use Services

7. *Marine (Ship) Service:* This service is a shipboard radio service authorized under Part 80 of the Commission's Rules to provide telecommunications between watercraft or between watercraft and shore-based stations. Radio installations are required by domestic and international law for large passenger or cargo vessels. Radio equipment may be voluntarily installed on smaller vessels, such as recreational boats. The Telecommunications Act of 1996 gave the Commission the authority to license certain ship stations by rule rather than by individual license. Private boat operators sailing entirely within domestic U.S. waters and who are not otherwise required by treaty or agreement to carry a radio, are no longer required to hold a marine license, and they will not be required to pay a regulatory fee. For FY 1997, we are proposing that parties required to be licensed and those choosing to be licensed for Marine (Ship) Stations will pay a $5 annual regulatory fee per station, payable for an entire ten-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is $50 for the ten year license term.

8. *Marine (Coast) Service:* This service includes land-based stations in the maritime services, authorized under Part 80 of the Commission's Rules, to provide communications services to ships and other watercraft in coastal and inland waterways. For FY 1997, we are proposing that licensees of Marine (Coast) Stations will pay a $5 annual regulatory fee per call sign, payable for the entire five-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is $25 per call sign for the five-year license term.

9. *Private Land Mobile (Other) Services:* These services include Land Mobile Radio Services operating under Parts 90 and 95 of the Commission's Rules. Services in this category provide one-or two-way communications between vehicles, persons or fixed stations on a shared basis and include radiolocation services, industrial radio services, and land transportation radio services. For FY 1997, we are proposing that licensees of services in this category will pay a $5 annual regulatory fee per call sign, payable for an entire five-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is $25 for the five-year license term.

10. *Aviation (Aircraft) Service:* These services include stations authorized to provide communications between aircraft and between aircraft and ground stations and include frequencies used to communicate with air traffic control facilities pursuant to Part 87 of the Commission's Rules. The Telecommunications Act of 1996 gave the Commission the authority to license certain aircraft radio stations by rule rather than by individual license. Private aircraft operators flying entirely within domestic U.S. airspace and who are not otherwise required by treaty or agreement to carry a radio are no longer required to hold an aircraft license, and they will not be required to pay a regulatory fee. For FY 1997, we are proposing that parties required to be licensed and those choosing to be licensed for Aviation (Aircraft) Stations will pay a $5 annual regulatory fee per station, payable for the entire ten-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is

[126] This category only applies to licensees of shared-use private 220–222 MHz and 470 MHz and above in the Specialized Mobile Radio (SMR) service who have elected not to change to the Commercial Mobile Radio Service (CMRS). Those who have elected to change to the CMRS are referred to paragraph 14 of this Attachment.

[127] Although this fee category includes licenses with ten-year terms, the estimated volume of ten-year license applications in FY 1997 is less than one-tenth of one percent and, therefore, is statistically insignificant.

$50 per station for the ten-year license term.

11. *Aviation (Ground) Service:* This service includes stations authorized to provide ground-based communications to aircraft for weather or landing information, or for logistical support pursuant to Part 87 of the Commission's Rules. Certain ground-based stations which only serve itinerant traffic, i.e., possess no actual units on which to assess a fee, are exempt from payment of regulatory fees. For FY 1997, we are proposing that licensees of Aviation (Ground) Stations will pay a $5 annual regulatory fee per license, payable for the entire five-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee is $25 per call sign for the five-year license term.

12. *General Mobile Radio Service (GMRS):* These services include Land Mobile Radio licensees providing personal and limited business communications between vehicles or to fixed stations for short-range, two-way communications pursuant to Part 95 of the Commission's Rules. For FY 1997, we are proposing that GMRS licensees will pay a $5 annual regulatory fee per license, payable for an entire five-year license term at the time of application for a new, renewal or reinstatement license. The total regulatory fee due is $25 per license for the five-year license term.

c. Amateur Radio Vanity Call Signs

13. *Amateur Vanity Call Signs:* This fee covers voluntary requests for specific call signs in the Amateur Radio Service authorized under part 97 of the Commission's Rules. For FY 1997, we are proposing that applicants for Amateur Vanity Call-Signs will pay a $5 annual regulatory fee per call sign, payable for an entire ten-year license term at the time of application for a vanity call sign. The total regulatory fee due would be $50 per license for the ten-year license term.[128]

d. Commercial Wireless Radio Services

14. *Commercial Mobile Radio Services (CMRS) Mobile Services:* The Commercial Mobile Radio Service (CMRS) is an ''umbrella'' descriptive term attributed to various existing services authorized to provide interconnected mobile radio services for profit to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public. CMRS Mobile Services include certain licensees which formerly were licensed as part of the Private Radio Services (e.g., Specialized Mobile Radio Services) and others formerly licensed as part of the Common Carrier Radio Services (e.g., Public Mobile Services and Cellular Radio Service). While specific rules pertaining to each covered service remain in separate Parts 22, 24, 80 and 90, general rules for CMRS are contained in Part 20. CMRS Mobile Services will include: qualifying Business Radio Services, 220–222 MHz Land Mobile Systems, Specialized Mobile Radio Services (Part 90);[129] Personal Communications Services (Part 24), Public Coast Stations (Part 80); Public Mobile Radio (Cellular, 800 MHz Air-Ground Radiotelephone, and Offshore Radio Services) (Part 22). Each licensee in this group will pay an annual regulatory fee for each mobile or cellular unit (mobile or cellular call sign or telephone number), including two-way paging units, assigned to its customers, including resellers of its services. For FY 1997, we are proposing that the regulatory fee be $.24 per unit.

15. *Commercial Mobile Radio Services (CMRS) One-Way Paging Services:* The Commercial Mobile Radio Service (CMRS) is an ''umbrella'' descriptive term attributed to various existing services authorized to provide interconnected mobile radio services for profit to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public. CMRS One-Way Paging Services include certain licensees which formerly were licensed as part of the Private Radio Services (e.g., Private Paging), licensees formerly licensed as part of the Common Carrier Radio Services (e.g., Public Mobile One-Way Paging), and licensees of Personal Communications Service (PCS) one-way paging. While specific rules pertaining to each covered service remain in separate Parts 22, 24 and 90, general rules for CMRS are contained in Part 20. We have replaced the Public Mobile One-Way Paging regulatory fee category with a CMRS One-Way Paging Services category for regulatory fee collection purposes. Each licensee in the CMRS One-Way Paging Services will pay an annual regulatory fee for each paging unit assigned to its customers, including resellers of its services. For FY 1997, we are proposing that the regulatory fee be $.03 per unit.

2. Mass Media Services

16. The regulatory fees for the Mass Media fee category apply to broadcast licensees and permittees. Noncommercial Educational Broadcasters are exempt from regulatory fees.

a. Commercial AM and FM Radio

17. These categories include licensed Commercial AM (Classes A, B, C, and D) and FM (Classes A, B, B1, C, C1, C2, and C3) Radio Stations operating under Part 73 of the Commission's Rules.[130] We are proposing that the regulatory fees for AM and FM Stations for FY 1997 are as follows:

AM Radio

Class A	$1,750
Class B	965
Class C	390
Class D	480

FM Radio

Classes C, C1, C2, B	$1,750
Classes A, B1, C3	1,050

b. Construction Permits—Commercial AM Radio

18. This category includes holders of permits to construct new Commercial AM Stations. For FY 1997, we are proposing that permittees will pay a fee of $195 for each permit held. Upon issuance of an operating license, this fee would no longer be applicable and licensees would be required to pay the applicable fee for the designated class of the station.

c. Construction Permits—Commercial FM Radio

19. This category includes holders of permits to construct new Commercial FM Stations. For FY 1997, we are proposing that permittees will pay a fee of $965 for each permit held. Upon issuance of an operating license, this fee would no longer be applicable. Instead, licensees would pay a regulatory fee based upon the designated class of the station.

[128] Section 9(h) exempts ''amateur radio operator licenses under Part 97 of the Commission's rules (47 CFR Part 97)'' from the requirement. However, Section 9(g)'s fee schedule explicitly includes ''Amateur vanity call signs'' as a category subject to the payment of a regulatory fee.

[129] This category does not include licensees of private shared-use 220 MHz and 470 MHz and above in the Specialized Mobile Radio (SMR) service who have elected to remain non-commercial. Those who have elected not to change to the Commercial Mobile Radio Service (CMRS) are referred to paragraph 4 of this Attachment. Further, Congress provided for a three year transition period until August 10, 1996, for conversion to CMRS. *See* Omnibus Budget Reconciliation Act of 1993, Public Law 103–66, Title VI § 6002(b), 107 Stat. 312,392. Therefore, licensees who had not converted to CMRS prior to December 31, 1995, are not subject to the CMRS Mobile Services fee for FY 1996.

[130] The Commission acknowledges that certain stations operating in Puerto Rico and Guam have been assigned a higher level station class than would be expected if the station were located on the mainland. Although this results in a higher regulatory fee, we believe that the increased interference protection associated with the higher station class is necessary and justifies the fee.

d. Commercial Television Stations

20. This category includes licensed Commercial VHF and UHF Television Stations covered under Part 73 of the Commission's Rules, except commonly owned Television Satellite Stations, addressed separately below. Markets are Nielsen Designated Market Areas (DMA) as listed in the *Television & Cable Factbook,* Stations Volume No. 64, 1996 Edition, Warren Publishing, Inc. We are proposing that the fees for each category of station are as follows:

VHF Markets 1–10	$44,700
VHF Markets 11–25	30,500
VHF Markets 26–50	16,350
VHF Markets 51–100	4,925
VHF Remaining Markets	835
UHF Markets 1–10	18,875
UHF Markets 11–25	15,625
UHF Markets 26–50	8,250
UHF Markets 51–100	2,875
UHF Remaining Markets	815

e. Commercial Television Satellite Stations

21. We are proposing that commonly owned Television Satellite Stations in any market (authorized pursuant to Note 5 of Section 73.3555 of the Commission's Rules) that retransmit programming of the primary station be assessed a fee of $975 annually. Those stations designated as Television Satellite Stations in the 1996 Edition of the *Television and Cable Factbook* are subject to the fee applicable to Television Satellite Stations. All other television licensees are subject to the regulatory fee payment required for their class of station and market.

f. Construction Permits—Commercial VHF Television Stations

22. This category includes holders of permits to construct new Commercial VHF Television Stations. For FY 1997, we are proposing that VHF permittees will pay an annual regulatory fee of $7,750. Upon issuance of an operating license, this fee would no longer be applicable. Instead, licensees would pay a fee based upon the designated market of the station.

g. Construction Permits—Commercial UHF Television Stations

23. This category includes holders of permits to construct new UHF Television Stations. For FY 1997, we are proposing that UHF Television permittees will pay an annual regulatory fee of $5,950. Upon issuance of an operating license, this fee would no longer be applicable. Instead, licensees would pay a fee based upon the designated market of the station.

h. Construction Permits—Satellite Television Stations

24. We are proposing that the fee for UHF and VHF Television Satellite Station construction permits for FY 1997 be $350. An individual regulatory fee payment is to be made for each Television Satellite Station construction permit held.

i. Low Power Television, FM Translator and Booster Stations, TV Translator and Booster Stations

25. This category includes Low Power UHF/VHF Television stations operating under Part 74 of the Commission's Rules with a transmitter power output limited to 1 kW for a UHF facility and, generally, 0.01 kW for a VHF facility. Low Power Television (LPTV) stations may retransmit the programs and signals of a TV Broadcast Station, originate programming, and/or operate as a subscription service. This category also includes translators and boosters operating under Part 74 which rebroadcast the signals of full service stations on a frequency different from the parent station (translators) or on the same frequency (boosters). The stations in this category are secondary to full service stations in terms of frequency priority. We have also received requests for waivers of the regulatory fees from operators of community based Translators. These Translators are generally not affiliated with commercial broadcasters, are nonprofit, nonprofitable, or only marginally profitable, serve small rural communities, and are supported financially by the residents of the communities served. We are aware of the difficulties these Translators have in paying even minimal regulatory fees, and we have addressed those concerns in the ruling on reconsideration of the FY 1994 *Report and Order.* Community based Translators are exempt from regulatory fees. For FY 1997, we are proposing that licensees in low power television, FM translator and booster, and TV translator and booster category will pay a regulatory fee of $225 for each license held.

j. Broadcast Auxiliary Stations

26. This category includes licensees of remote pickup stations (either base or mobile) and associated accessory equipment authorized pursuant to a single license, Aural Broadcast Auxiliary Stations (Studio Transmitter Link and Inter-City Relay) and Television Broadcast Auxiliary Stations (TV Pickup, TV Studio Transmitter Link, TV Relay) authorized under Part 74 of the Commission's Rules. Auxiliary Stations are generally associated with a particular television or radio broadcast station or cable television system. This category does not include translators and boosters (see paragraph 26). For FY 1997, we are proposing that licensees of Commercial Auxiliary Stations will pay a $25 annual regulatory fee on a per call sign basis.

k. Multipoint Distribution Service

27. This category includes Multipoint Distribution Service (MDS), and Multichannel Multipoint Distribution Service (MMDS), authorized under Part 21 of the Commission's Rules to use microwave frequencies for video and data distribution within the United States. For FY 1997, we are proposing that MDS and MMDS stations will pay an annual regulatory fee of $215 per call sign.

3. Cable Services

a. Cable Television Systems

28. This category includes operators of Cable Television Systems, providing or distributing programming or other services to subscribers under Part 76 of the Commission's Rules. For FY 1997, we are proposing that Cable Systems will pay a regulatory fee of $.55 per subscriber.[131] Payments for Cable Systems are to be made on a per subscriber basis as of December 31, 1995. Cable Systems should determine their subscriber numbers by calculating the number of single family dwellings, the number of individual households in multiple dwelling units, *e.g.,* apartments, condominiums, mobile home parks, etc., paying at the basic subscriber rate, the number of bulk rate customers and the number of courtesy or fee customers. In order to determine the number of bulk rate subscribers, a system should divide its bulk rate charge by the annual subscription rate for individual households. See FY 1994 *Report and Order,* Appendix B at Paragraph 31.

b. Cable Antenna Relay Service

29. This category includes Cable Antenna Relay Service (CARS) stations used to transmit television and related audio signals, signals of AM and FM Broadcast Stations, and cablecasting from the point of reception to a terminal point from where the signals are distributed to the public by a Cable Television System. For FY 1997, we are proposing that licensees will pay an

[131] Cable systems are to pay their regulatory fees on a per subscriber basis rather than per 1,000 subscribers as set forth in the statutory fee schedule. See FY 1994 *Report and Order* at Paragraph 100.

annual regulatory fee of $65 per CARS license.

4. Common Carrier Services

a. Domestic Public Fixed Radio Service

30. This category includes licensees in the Point-to-Point Microwave Radio Service, Local Television Transmission Radio Service, and Digital Electronic Message Service, authorized under Part 101 of the Commission's Rules to use microwave frequencies for video and data distribution within the United States. These services are now included in the Microwave category (see paragraph 5 above).

b. Interstate Telephone Service Providers

31. This category includes Inter-Exchange Carriers (IXCs), Local Exchange Carriers (LECs), Competitive Access Providers (CAPs), domestic and international carriers that provide operator services, Wide Area Telephone Service (WATS), 800, 900, telex, telegraph, video, other switched, interstate access, special access, and alternative access services either by using their own facilities or by reselling facilities and services of other carriers or telephone carrier holding companies, and companies other than traditional local telephone companies that provide interstate access services to long distance carriers and other customers. This category also includes pre-paid calling card providers. These common carriers, including resellers, must submit fee payments based upon their proportionate share of gross interstate revenues using the methodology that we have adopted for calculating contributions to the TRS fund. *See Telecommunications Relay Services,* 8 FCC Rcd 5300 (1993), 58 FR 39671 (July 26, 1993). In order to avoid imposing any double payment burden on resellers, we will permit carriers to subtract from their gross interstate revenues, as reported to NECA in connection with their TRS contribution, any payments made to underlying common carriers for telecommunications facilities and services, including payments for interstate access service, that are sold in the form of interstate service. For this purpose, resold telecommunications facilities and services are only intended to include payments that correspond to revenues that will be included by another carrier reporting interstate revenue. For FY 1997, we are proposing that carriers multiply their adjusted gross revenue figure (gross revenue reduced by the total amount of their payments to underlying common carriers for telecommunications facilities or services) by the factor 0.00119 to determine the appropriate fee for this category of service. Regulatees may want to use the following worksheet to determine their fee payment:

	Total	Interstate
(1) Revenue reported in TRS Fund worksheets	.....	.....
(2) Less: Access charges paid	.....	.....
(3) Less: Other telecommunications facilities and services taken for resale	.....	.....
(4) Adjusted revenues (1)minus(2)minus(3)	.....	.....
(5) Fee factor	.....	0.00119
(6) Fee due (4)times(5)	.....	.....

5. International Services

a. Earth Stations

32. Very Small Aperture Terminal (VSAT) Earth Stations, equivalent C-Band Earth Stations and antennas, and earth station systems comprised of very small aperture terminals operate in the 12 and 14 GHz bands and provide a variety of communications services to other stations in the network. *VSAT* systems consist of a network of technically-identical small Fixed-Satellite Earth Stations which often include a larger hub station. VSAT Earth Stations and C-Band Equivalent Earth Stations are authorized pursuant to Part 25 of the Commission's Rules. *Mobile Satellite Earth Stations,* operating pursuant to Part 25 of the Commission's Rules under blanket licenses for mobile antennas (transceivers), are smaller than one meter and provide voice or data communications, including position location information for mobile platforms such as cars, buses, or trucks.[132] *Fixed-Satellite Transmit/Receive and Transmit-Only Earth Station antennas,* authorized or registered under Part 25 of the Commission's Rules, are operated by private and public carriers to provide telephone, television, data, and other forms of communications. Included in this category are telemetry, tracking and control (TT&C) earth stations, and earth station uplinks. For FY 1997, we are proposing that licensees of VSATs, Mobile Satellite Earth Stations, and Fixed-Satellite Transmit/Receive and Transmit-Only Earth Stations will pay a fee of $515 per authorization or registration *as well as a separate fee of $515 for each associated Hub Station.*

33. *Receive-only earth stations.* For FY 1997, we are proposing that there be no regulatory fee for receive-only earth stations.

b. Space Stations (Geosynchronous)

34. Geosynchronous Space Stations are domestic and international satellites positioned in orbit to remain approximately fixed relative to the earth. Most are authorized under Part 25 of the Commission's Rules to provide communications between satellites and earth stations on a common carrier and/or private carrier basis. In addition, this category includes Direct Broadcast Satellite (DBS) Service which includes space stations authorized under Part 100 of the Commission's rules to transmit or re-transmit signals for direct reception by the general public encompassing both individual and community reception. For FY 1997, we are proposing that entities authorized to operate geosynchronous space stations (including DBS satellites) will be assessed an annual regulatory fee of $98,575 per operational station in orbit. Payment is required for any geosynchronous satellite that has been launched and tested and is authorized to provide service.

c. Low Earth Orbit Satellites (LEOs)

35. Low Earth Orbit Satellite Systems are space stations that orbit the earth in non-geosynchronous orbit. They are authorized under Part 25 of the Commission's rules to provide communications between satellites and earth stations on a common carrier and/or private carrier basis. For FY 1997, we are proposing that entities authorized to operate Low Earth Orbit Satellite Systems will be assessed an annual regulatory fee of $136,500 per operational system in orbit. Payment is required for any LEO System that has one or more operational satellites.

[132] Mobile earth stations are hand-held or vehicle-based units capable of operation while the operator or vehicle is in motion. In contrast, transportable units are moved to a fixed location and operate in a stationary (fixed) mode. Both are assessed the same regulatory fee for FY 1997.

d. Signatories

36. A *Signatory to INMARSAT* is an Administration or government, or the telecommunications entity designated as sole operating entity by an Administration or government, which participates in the International Mobile Satellite Organization (INMARSAT) in order to develop and operate a global maritime satellite telecommunication system which serves maritime commercial and safety needs of the United States and foreign countries. A *Signatory to INTELSAT* is an Administration or government, or the telecommunications entity designated as sole operating entity by an Administration or government, which participates in the International Telecommunications Satellite Organization (INTELSAT) in order to develop, construct, operate, and maintain the space segment of the global commercial telecommunications satellite system established under the Interim Agreement and Special Agreement signed by Governments on August 20, 1964. For FY 1997, we are proposing that Signatories to INMARSAT and INTELSAT will be assessed an annual regulatory fee of $326,025 in order to recover the cost of the Commission's regulatory activities associated with such entities.

e. International Bearer Circuits

37. Regulatory fees for International Bearer Circuits are to be paid by the facilities-based common carriers (either domestic or international) activating the circuit in any transmission facility for the provision of service to an end user or resale carrier. Payment of the fee for bearer circuits by private submarine cable operators is required for circuits sold on an indefeasible right of use (IRU) basis or leased to any customer other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. *Compare* FY 1994 *Report and Order* at 5367. The fee is based upon active 64 Kbps circuits, or their equivalent circuits. Under this formulation, 64 Kbps circuits or their equivalent will be assessed a fee. Equivalent circuits include the 64 Kbps circuit equivalent of larger bit stream circuits. For example, the 64 Kbps circuit equivalent of a 2.048 Mbps circuit is 30 64 Kbps circuits. Analog circuits such as 3 and 4 KHz circuits used for international service are also included as 64 Kbps circuits. However, circuits derived from 64 Kbps circuits by the use of digital circuit multiplication systems are not equivalent 64 Kbps circuits. Such circuits are not subject to fees. Only the 64 Kbps circuit from which they have been derived will be subject to payment of a fee. For FY 1997, we are proposing that the regulatory fee be $5.00 for each active 64 Kbps circuit or equivalent. For analog television channels we will assess fees as follows:

Analog television channel size in MHz	No. of equivalent 64 Kbps circuits
36	630
24	288
18	240

f. International Public Fixed

38. This fee category includes common carriers authorized under Part 23 of the Commission's Rules to provide radio communications between the United States and a foreign point via microwave or HF troposcatter systems, other than satellites and satellite earth stations, but not including service between the United States and Mexico and the United States and Canada using frequencies above 72 MHz. For FY 1997, we are proposing that International Public Fixed Radio Service licensees will pay a $315 annual regulatory fee per call sign.

g. International (HF) Broadcast

39. This category covers International Broadcast Stations licensed under Part 73 of the Commission's Rules to operate on frequencies in the 5,950 KHz to 26,100 KHz range to provide service to the general public in foreign countries. For FY 1997, we are proposing that International HF Broadcast Stations will pay an annual regulatory fee of $390 per station license.

Attachment I—Description of FCC Activities

Authorization of Service: The authorization or licensing of radio stations, telecommunications equipment, and radio operators, as well as the authorization of common carrier and other services and facilities. Includes policy direction, program development, legal services, and executive direction, as well as support services associated with authorization activities.[133]

Policy and Rulemaking: Formal inquiries, rulemaking proceedings to establish or amend the Commission's rules and regulations, action on petitions for rulemaking, and requests for rule interpretations or waivers; economic studies and analyses; spectrum planning, modeling, propagation-interference analyses, and allocation; and development of equipment standards. Includes policy direction, program development, legal services, and executive direction, as well as support services associated with policy and rulemaking activities.

Enforcement: Enforcement of the Commission's rules, regulations and authorizations, including investigations, inspections, compliance monitoring, and sanctions of all types. Also includes the receipt and disposition of formal and informal complaints regarding common carrier rates and services, the review and acceptance/rejection of carrier tariffs, and the review, prescription and audit of carrier accounting practices. Includes policy direction, program development, legal services, and executive direction, as well as support services associated with enforcement activities.

Public Information Services: The publication and dissemination of Commission decisions and actions, and related activities; public reference and library services; the duplication and dissemination of Commission records and databases; the receipt and disposition of public inquiries; consumer, small business, and public assistance; and public affairs and media relations. Includes policy direction, program development, legal services, and executive direction, as well as support services associated with public information activities.

[133] Although Authorization of Service is described in this exhibit, it is *not* one of the activities included as a feeable activity for regulatory fee purposes pursuant to Section 9(a)(1) of the Act. 47 U.S.C. § 159(a)(1).

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 630 and 678

[I.D. 022897G]

Atlantic Swordfish Fishery; Atlantic Shark Fishery; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public hearings; request for comments.

SUMMARY: The Highly Migratory Species Division (HMS Division) will convene 12 hearings to obtain comments from the public on Draft Amendment 1 to the

Fishery Management Plan for Atlantic Swordfish (Swordfish FMP), on Draft Amendment 1 to the Fishery Management Plan for Sharks of the Atlantic Ocean (Shark FMP) and proposed rules implementing a limited access system for each fishery. The proposed rule for the Shark FMP was published in the Federal Register on December 27, 1996 and the proposed rule for the Swordfish FMP was published on February 26, 1997. NMFS is also requesting written comments on Draft Amendment 1 to the Swordfish FMP, the Draft Amendment 1 to the Shark FMP and on the proposed rules.

DATES: Written comments will be accepted until April 28, 1997. Public hearings will be held in March and April. See **SUPPLEMENTARY INFORMATION** for specific dates and times of the hearings.

ADDRESSES: Written comments should be sent to Dr. Rebecca Lent, Chief, HMS Division, Office of Sustainable Fisheries (F/SF1), 1315 East-West Highway, Silver Spring, MD 20910 (FAX: 301–713–1917). Clearly mark the outside of the envelope ''Limited Access Comments.'' Copies of the proposed rule and Draft Amendment 1 to the Swordfish FMP, which includes an environmental assessment and regulatory impact review, are available from James Chambers at the same address. Public hearings will be held in Maine, Rhode Island, New York, New Jersey, Maryland, North Carolina, Florida, Louisiana, the U.S. Virgin Islands and Puerto Rico. See **SUPPLEMENTARY INFORMATION** for locations of the hearings.

FOR FURTHER INFORMATION CONTACT: James Chambers, Fishery Management Specialist, or Margo Schulze, Fishery Biologist, HMS Division, 301–713–2347.

SUPPLEMENTARY INFORMATION: Issues that are addressed in Draft Amendment 1 to the Swordfish FMP include: Proposed implementation of a two-tiered permit system consisting of directed and incidental permits for the commercial fishery, eligibility criteria for these permits based on historical participation, transferability provisions, the permitting process, upgrading restrictions and ownerships limits.

A complete description of the measures, including the purpose and need for the proposed action concerning Atlantic swordfish, is contained in the proposed rule published February 26, 1997 (62 FR 8672), and is not repeated here. Copies of the proposed rule and Draft Amendment 1 to the Swordfish FMP may be obtained by writing (see **ADDRESSES**) or calling one of the contact persons (see **FOR FURTHER INFORMATION CONTACT**). Draft Amendment 1 to the Shark FMP and its proposed rule were published December 27, 1996 (61 FR 68202), and address similar issues to those in proposed rule and Draft Amendment 1 to the Swordfish FMP.

To accommodate people unable to attend a hearing or wishing to provide additional comments, NMFS also solicits written comments on the proposed rules.

The public hearings are scheduled as follows:

1. Friday, March 21, 1997—City Hall (Commission Chambers, 1st floor), 100 North Andrews Avenue, Ft. Lauderdale, FL 33301, (954) 761–5002, 3 p.m.–6 p.m.

2. Monday, March 31, 1997—West Bank Regional Library Meeting Room (1st floor), 2751 Manhattan Boulevard (near Lapalco Boulevard), Harvey, LA 70058–6144, (504) 364–3972, 3 p.m.–6 p.m.

3. Tuesday, April 1, 1997—Town Hall Auditorium, 19305 Gulf Boulevard, Indian Shores, FL 33785, (813) 595–4020, 7 p.m.–10 p.m.

4. Wednesday, April 2, 1997—Monroe County Public Library (Auditorium), 700 Flemming Street, Key West, FL 33040 (305) 292–3595, 4 p.m.–6 p.m.

5. Thursday, April 3, 1997—Pan Am Dock (East), Isla Grande, San Juan, PR 00907, (803) 522–1509, 4 p.m.–7 p.m.

6. Saturday, April 5, 1997—Town Hall at the Caravelle Hotel, 44A Queen Cross Street, Saint Croix, USVI 00820, (809) 773–0687, 3 p.m.–6 p.m.

7. Tuesday, April 8, 1997—Portland Public Library (Room 316), 5 Monument Square, Portland, ME 04101, (207) 871–1755, 7 p.m.–10 p.m.

8. Wednesday, April 9, 1997—Providence Biltmore Hotel

State Suite C (2nd level), Kennedy Plaza, Providence RI 02903,

(401) 455–3027, 3 p.m.–6 p.m.

9. Thursday, April 10, 1997—Montauk Fire Hall, 12 Flamingo Avenue, Montauk, NY 11954, (516) 668–5695, 7 p.m.–10 p.m.

10. Friday, April 11, 1997—Barnegat Light Firehouse, 10th and Boulevard Streets, Long Beach Island, Barnegat Light, NJ 08006, (609) 494–1280, 7 p.m.–10 p.m.

11. Sunday, April 13, 1997—North Carolina Aquarium (Auditorium), Airport Road, Manteo, NC 27954, (919) 473–3494, 7 p.m.–10 p.m.

12. Monday, April 28, 1997—NOAA, First Floor Conference Room (1W611), Silver Spring Metro Center Building 4,

1305 East-West Highway, Silver Spring, MD 20910, (301) 713–2227, 10 a.m.–12 p.m.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to James Chambers or Margo Schulze (see **ADDRESSES**) at least 15 days before the hearing date.

Authority: 16 U.S.C. 1801 *et seq.* and 16 U.S.C. 971 *et seq.*

Dated: March 4, 1997.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–5783 Filed 3–7–97; 8:45 am]

BILLING CODE 3510–22–F

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50 CFR Part 648

[I.D. 022797A]

New England Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a 2-day public meeting on March 12 and 13, 1997, to consider actions affecting New England fisheries in the exclusive economic zone.

DATES: The meeting will be held on Wednesday, March 12, 1997, at 10 a.m. and on Thursday, March 13, 1997, at 8:30 a.m.

ADDRESSES: The meeting will take place at the King's Grant Inn, Route 128 and Trask Lane, Danvers, MA; telephone (508) 774-6800. Requests for special accommodations should be addressed to the New England Fishery Management Council, 5 Broadway, Saugus, MA 01906-1097; telephone: (617) 231-0422.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council, (617) 231-0422.

SUPPLEMENTARY INFORMATION:

March 12, 1997

The March 12 session will begin with Enforcement Committee recommendations on cod trip limits and fishing vessels transiting closed areas. In addition to reviewing NMFS and Coast Guard reports to the Council on recent enforcement actions, the Enforcement Committee will provide an update on a Vessel Tracking System trial program and an evaluation of the current scallop regulations. The Scallop Committee will review its most recent discussion of

fishing effort consolidation. The day will conclude with a report by the Groundfish Committee chairman. His briefing on the committee's discussions will include: Maintaining or opening groundfish closed areas to scallop dredging; consideration of a framework adjustment to the Northeast Multispecies Fishery Management Plan (FMP) that would contain measures to protect incoming year classes of winter flounder; development of a timetable for winter flounder stock rebuilding and for whiting management; consideration of a year-round fishery for small scallop dredges in the Nantucket Shoals Dogfish Exemption Area; the August 15 through September 13 Northeast Closure Area for groundfish, as it relates to the gillnet fishery requirement to take 21 days off from groundfish fishing between June and September; and initial action on a framework adjustment to the FMP under the framework for abbreviated rulemaking procedure contained in 50 CFR 648.82. In addition to allowing fishing in the North Atlantic Fisheries Organization regulated area without using multispecies days-at-sea (DAS) allocations, this framework adjustment would provide incentives to fish offshore through several means including not counting steaming time against multispecies DAS allocations.

March 13, 1997

The Council Chairman; Executive Director; Regional Administrator, Northeast Region, NMFS; representatives from the Northeast Fisheries Science Center; Atlantic States Marine Fisheries Commission (ASMFC); U.S. Coast Guard; and the Mid-Atlantic Fishery Management Council liaison will report on recent activities. There will be a briefing on the Atlantic Coastal Cooperative Statistics Program followed by an update on public comments received to date on monkfish management proposals. During the latter portion of the meeting, the Responsible Fishing Committee will discuss fishermen's training and certification programs. There will be an update on ASMFC's lobster management program and a NMFS update on actions to restrict lobster gear to reduce the risk of northern right whale entanglements.

Announcement of Experimental Fishery Applications

There will be a discussion of several experimental fisheries that have been recently submitted to NMFS for review and approval. Among the proposed experiments are extensions of two previous experiments, two expansions of previously conducted experiments and two new experiments. The Regional Administrator has conducted preliminary reviews of the experimental fishery proposals and is seeking Council and industry comments on the proposals.

The New Jersey Department of Environmental Protection, Division of Fish Game and Wildlife conducted studies on food habits and digestive systems of lobsters taken from artificial reef systems off of New Jersey. One fishing vessel was issued an experimental fishing permit (EFP) that exempted it from the possession limit for vessels without a Federal American lobster permit, size limit, and prohibition on possession of lobster parts. The investigators were not able to collect their target numbers of 150 lobsters and have therefore requested an extension of the EFP to cover the period from June through October of 1997.

The Research Foundation of the State University of New York (SUNY) has been issued an EFP for a fishing vessel that it has chartered to conduct studies on interactions between juvenile groundfish and their habitats. The study is funded under the Saltonstall/Kennedy Grant program and the EFP expires on April 30, 1997. SUNY has requested that the EFP be extended to cover the duration of the funded activities. The project involves collection of samples of juvenile fish in the New York Bight area with small mesh trawl gear. An EFP is required to exempt the participating vessel from DAS, gear and mesh size restrictions, and minimum fish size limits of the FMP.

A member of the fishing industry has requested that the seasonal experimental whiting separator trawl fishery conducted in the Northern Shrimp Small Mesh Exemption Area be extended to allow fishing under the experiment for the entire year. In addition, the applicant has requested the use of a grate bar spacing of 2 inches (5.08 cm) instead of the previous 1–9/16 - inch (4–cm) bar spacing used in the previous fishery. EFPs would be necessary to exempt participating vessels from mesh size, DAS, and bycatch restrictions of the FMP.

The Massachusetts Division of Marine Fisheries (MADMF) has requested that its experimental small mesh raised footrope trawl whiting fishery conducted in Cape Cod Bay be expanded to allow two to three vessels to fish in three additional distinct areas within the GOM/GB Regulated Mesh Area. MADMF would monitor the vessels and the trawl gear to determine if the raised footrope trawl is an appropriate gear to reduce bycatch of regulated species in areas outside of Cape Cod Bay. EFPs would be required to exempt vessels from mesh size, DAS, and bycatch restrictions of the multispecies FMP.

The MADMF and an industry member have submitted an application to conduct comparisons of catch rates of yellowtail flounder using diamond and square mesh trawls. The purpose of the study is to determine the selectivity of diamond or square mesh trawls on yellowtail flounder. An EFP would be required to exempt the vessel from possession limits, DAS, and mesh size restrictions of the FMP. While the vessel will be using the regulated 6–inch (15.24–cm) mesh trawls, small mesh codend covers will be used to measure the catches of the fish for each type of trawl. The applicants have further requested that the vessel be allowed to retain and land legal sized regulated multispecies on the experimental trips.

The Maine Department of Marine Resources (MEDMR) had requested that fishing vessels and recreational fishers be allowed to catch and retain juvenile tagged regulated multispecies that were raised and released by MEDMR. Participating fishers would return the tagged fish to MEDMR. The purpose of the tagged fish recovery effort is to measure the survivability of released fish. Those catching and returning tagged juvenile regulated species would be required to be exempted from the minimum fish size limits and possibly DAS and possession limits of the multispecies FMP.

Prior to the conclusion of the meeting, the Council will discuss policy advice to the Mid-Atlantic Council on mackerel joint ventures and comments on NMFS' proposed swordfish fishery limited access program.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Authority: 16 U.S. C. 1801 *et seq.*

Dated: March 4, 1997.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–5784 Filed 3–7–97; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 62, No. 46
Monday, March 10, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

National Sheep Industry Improvement Center; Notice of Board Meetings and Public Hearings on Policy Objectives.

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice of board meetings and public hearings.

SUMMARY: The Board of Directors of the National Sheep Industry Improvement Center announces three public hearings seeking input on policy objectives to be used in the strategic plan for accomplishing the purposes of the Center. The Board of Directors also announces two Board meetings in conjunction with the hearings. (The Board meetings are open to the public.)

DATES: The hearing and/or meeting dates are:

1. March 26, 1997, 7:30 p.m., Columbus, OH; Board meeting.
2. March 27, 1997, 8:30 a.m. to 12:00 noon, Columbus, OH; public hearing.
3. May 6, 1997, 8:30 a.m to 12:30 p.m., San Angelo, TX; public hearing.
4. May 7, 1997, 8:30 a.m. to 12:30 p.m., Salt Lake City, UT; public hearing followed by Board of Directors meeting at 2:00 p.m.

Other deadlines are:

1. May 5, 1997, written testimony must be received by the Board on or before date to receive consideration at the May 7, 1997, Board meeting.
2. Written comments should be received by May 16, 1997, to receive consideration in developing the strategic plans.

ADDRESSES: The meeting locations are:

1. Columbus, OH—Ohio State University Fawcett Center, 2400 Olentangy River Road, Columbus, Ohio
2. San Angelo, TX—Texas A&M University, Agricultural Research and Extension Center, 7887 Highway 87 North, San Angelo, Texas
3. Salt Lake City, UT—Airport Hilton, 5151 Wiley Post Way, Salt Lake City, UT

Written comments:

Submit written comments in duplicate to Thomas H. Stafford, Director, Cooperative Marketing Division, Cooperative Services, RBS, USDA, Stop 3252, 1400 Independence Ave. SW, Washington, DC 20080–3252. Comments may also be submitted via the Internet by addressing them to tstaff@rurdev.usda.gov and must contain ''Sheep Industries'' in the subject.

FOR FURTHER INFORMATION CONTACT: Thomas H. Stafford, Director, Cooperative Marketing Division, Cooperative Services, RBS, USDA, Stop 3252, Room 4204, 1400 Independence Ave. SW, Washington, DC 20080–3252, telephone (202) 690–0368. (This is not a toll free number.) E-mail: tstaff@rurdev.usda.gov. The Federal Information Relay service on 1–800–877–8339 may be used by TDD users.

SUPPLEMENTARY INFORMATION: The National Sheep Industry Improvement Center is seeking input into policy objectives that will guide the Center's assistance in strengthening the Nation's sheep and goat industries. The board is not looking for specific proposals at this time.

Background

In response to challenges facing the sheep and goat industries, the 1996 Farm Bill established the National Sheep Industry Improvement Center to assist and strengthen the U.S. sheep and goat industries through projects and assistance financed through the Center's revolving fund. The Center will manage a revolving fund of up to $50 million in Federal funds to facilitate the production and marketing of sheep and goats, and their products.

Treasury has deposited the initial $20 million into the Center's fund. This fund is capped at $50 million Federal funds—where authorization was provided for an additional $30 million in appropriated funds. After 10 years or upon receipt of $50 million in Federal funds to the revolving fund, the Center and its activities shall be privatized and no additional Federal funds shall be used to carry out the activities of the Center.

The Center is managed by a nine member (7 voting and 2 nonvoting members), non-compensated board. The seven voting members were chosen by the Secretary of Agriculture from the sheep and goat industries and the two non-voting members from the USDA are the Under Secretary for Rural Development and the Under Secretary for Research, Education and Economics. The Board of Directors may use the monies in the fund to make grants, and intermediate and long-term loans, contracts, cooperative repayable agreements, or cooperative agreements in accordance with an annual strategic plan submitted to the Secretary of Agriculture. Funds may be used to participate with Federal and State agencies, other public and private funding sources, and in regional efforts. Funding activities include providing security for, or making principal or interest payments on, revenue or general obligation bond issues, accruing interest, guaranteeing or purchasing insurance for local obligations, and selling acquired assets or loans.

Puposes of the Center

The purposes of the Center are to:

(1) promote strategic development activities and collaborative efforts by private and State entities to maximize the impact of Federal assistance to strengthen and enhance production and marketing of sheep or goat products in the United States;

(2) optimize the use of available human capital and resources within the sheep or goat industries;

(3) provide assistance to meet the needs of the sheep or goat industry for infrastructure development, business development, production, resource development, and market and environmental research;

(4) advance activities that empower and build the capacity of the United States sheep or goat industry to design unique responses to the special needs of the sheep or goat industries on both a regional and national basis; and

(5) adopt flexible and innovative approaches to solving the long-term needs of the United States sheep and goat industries.

Public Hearing Procedure

Interested persons may present data, information, or views, orally or in writing, on issues pertaining to the development of a strategic plan for the National Sheep Industry Improvement Center. Those desiring to make formal

presentations should notify the contact person two (2) business days prior to the hearing, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments. Any person attending the hearing who does not, in advance of the hearing, request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion if time permits, at the chairperson's discretion. If more time is needed than currently scheduled, at the discretion of the chairperson, presentations will be limited in time and/or hearing time will be extended. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Authority: 7 USC 2008j, Pub.L. 104.130.

Dated: February 28, 1997.

Dayton J. Watkins,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 97–5748 Filed 3–7–97; 8:45 am]

BILLING CODE 3410–XY–P

Rural Utilities Service

Navajo Tribal Utility Authority; Finding of No Significant Impact

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS) has made a Finding of No Significant Impact (FONSI) with respect to the potential environmental impact related to the construction, operation and maintenance of the Burnside Junction to Coalmine 115 kV Transmission Line Project proposed by the Navajo Tribal Utility Authority (NTUA) of Fort Defiance, Arizona.

RUS has concluded that the environmental impacts from the proposed project would not be significant and that the proposed action is not a major Federal action significantly affecting the quality of the human environment. Therefore, the preparation of an environmental impact statement is not required.

FOR FURTHER INFORMATION CONTACT: Dennis E. Rankin, Environmental Protection Specialist, RUS, Engineering and Environmental Staff, Stop 1571, 1400 Independence Avenue SW, Washington, DC 20250–1571, telephone (202) 720–1784.

SUPPLEMENTARY INFORMATION: The proposed 40-mile transmission line would extend from the Coalmine Substation located near Tse Bonito, New Mexico (east of Window Rock, Arizona) to tap an existing 69 kV transmission line in the vicinity of Burnside Junction (located west of Ganado, Arizona). The transmission line will be designed and built for 115 kV operation, but will initially be operated at 69 kV. The primary structure type would be H-frame structures located on a 100-foot right-of-way.

The Bureau of Indian Affairs (BIA) and its environmental consultant prepared an environmental assessment report (EAR) reflecting the potential impacts of the proposed facilities. The BIA EAR, which includes input from Federal, State and local agencies and the public, has been adopted as RUS's Environmental Assessment (EA) for the project in accordance with 7 CFR 1794.61. RUS has concluded that the EA represents an accurate assessment of the environmental impacts of the project. The proposed project should have no impact on cultural resources, floodplains, wetlands, important farmland and federally listed or proposed for listing threatened or endangered species or their critical habitat.

Alternatives considered to the project included no action, localized generating facilities, wind and solar generation and alternative routes. RUS has considered these alternatives and concluded that the project as proposed meets the needs of NTUA to provide adequate service to the central section of the Navajo Nation.

Copies of the EA and FONSI are available for review at RUS at the address provided herein; or can be reviewed at or obtained from the offices of NTUA, P.O. Box 170, Fort Defiance, Arizona 86504, telephone (520) 729–5721, during normal business hours.

Dated: March 3, 1997.

Adam M. Golodner,

Deputy Administrator, Program Operations.

[FR Doc. 97–5850 Filed 3–7–97; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Board of Overseers of the Malcolm Baldrige National Quality Award

AGENCY: National Institute of Standards and Technology Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Board of Overseers of the Malcolm Baldrige National Quality Award (MBNQA) will meet on Wednesday, April 2, 1997, from 10:30 a.m. to 4:00 p.m. The Board of Overseers is composed of nine members prominent in the field of quality management and appointed by the Secretary of Commerce. The members of the Board of Overseers will meet jointly with the members of the Judges Panel of the MBNQA. The Board will receive and then discuss reports from the Judges Panel and the National Institute of Standards and Technology (NIST) on the Award process. These reports and discussions will cover the following topics: review of roles/responsibilities of Judges and Overseers; status of the 1996/1997 Award Cycles; health care and education award progress; information transfer on winners' responsibility, application trend, and Quest for Excellence IX Conference and regional conferences.

DATES: The meeting will convene April 2, 1997, at 10:30 a.m. and adjourn at 4:00 p.m. on April 2, 1997.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administration Building Conference Room (seating capacity 36, includes 24 participants), Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Dr. Harry Hertz, Director for Quality Programs, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2361.

Dated: March 3, 1997.

Elaine Bunten-Mines,

Director, Program Office.

[FR Doc. 97–5855 Filed 3–7–97; 8:45 am]

BILLING CODE 3510–13–M

Judges Panel of the Malcolm Baldrige National Quality Award

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Judges Panel of the Malcolm Baldrige National Quality Award (MBNQA) will meet on Tuesday, April 1, 1997, from 8:30 a.m. to 5:30 p.m., and on Wednesday, April 2, 1997, from 8:30 a.m. to 10:30 a.m. The Judges Panel is composed of nine members prominent in the field of quality management and appointed by the Secretary of Commerce. The Judges

Panel will meet on April 1, 1997, to review the summary of the 1996 Award cycle, establish the 1997 Award application review cycle, review survey of former applicants, review improvements on the feedback and judging processes, and discuss future plans for the Award program. On April 2, 1997, the Panel will discuss its reports to the Board of Overseers of the MBNQA and to the National Institute of Standards and Technology. The Panel's discussions will cover the following topics: review of roles/responsibilities of Judges and Overseers; status of the 1996/1997 Award Cycles; health care and education award progress; information transfer on winners' responsibility, application trend, and Quest for Excellence IX Conference and regional conferences. The discussions on April 1, 1997, beginning at 8:30 a.m., and ending at 5:30 p.m., will be closed.

DATES: The meeting will convene April 1, 1997, at 8:30 a.m. and adjourn at 10:30 p.m. on April 2, 1997.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administration Building Conference Room (seating capacity 36, includes 24 participants), Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT:

Dr. Harry Hertz, Director for Quality Programs, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2361.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on February 10, 1997, that the meeting of the Judges Panel will be closed pursuant to Section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, as amended by Section 5(c) of the Government in the Sunshine Act, P.L. 94–409. The meeting, which involves examination of records and discussion of Award applicant data, may be closed to the public in accordance with Section 552b(c)(4) of the Title 5, United States Code, since the meeting is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential.

Dated: March 3, 1997.

Elaine Bunten-Mines,

Director, Program Office.

[FR Doc. 97–5867 Filed 3–7–97; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

[I.D. 022597D]

Western Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold a joint meeting of its Crustaceans Plan Team and Hawaii Crustaceans Advisory Panel.

DATES: The meeting will be held on March 18 and 19, 1997, from 8:30 a.m. to 5:00 p.m., each day.

ADDRESSES: The meeting will be held at the Ilikai Hotel, Yacht Harbor Tower, Room 262, 1777 Ala Moana Blvd., Honolulu, HI; telephone: (808) 949–3811.

Council address: Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1405, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: The plan team and advisory panel will discuss and may make recommendations to the Council on the following agenda items:

1. Review of the Northwestern Hawaiian Island lobster fishery and stock status;

2. Estimation of annual harvest guideline, including: (a) review of model to estimate exploitable population size, (b) review of risk analysis estimation procedure, and (c) review panel recommendations;

3. Review of NMFS report, including: (a) assessment of methods and results to estimate high-grading in 1996 season, and (b) possible economic pros/cons of high-grading;

4. Review of adjustment mechanisms to correct for significant high-grading, including: (a) trap modification, (b) lower risk level to include grater uncertainty, (c) incorporate high-grading as additional component of M in model estimates, (d) use of observers to document level of high-grading, (e) other possible adjustments, and (f) statistically valid sampling and design to estimate high-grading;

5. Sampling considerations for expanding live lobster fishery;

6. Determination of Harvest Guideline for 1997 season; and

7. Other business as required.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to meeting date.

Dated: March 3, 1997.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–5785 Filed 3–7–97; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of a New Export Visa Arrangement for Certain Wool Textile Products Produced or Manufactured in the Slovak Republic

March 5, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing export visa requirements.

EFFECTIVE DATE: April 1, 1997.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

In an exchange of notes dated November 18, 1996 and January 31, 1997, the Governments of the United States and the Slovak Republic agreed to establish a new Export Visa Arrangement for certain wool textile products, produced or manufactured in the Slovak Republic and exported on and after April 1, 1997. Goods exported during the period April 1, 1997 through April 30, 1997 shall not be denied entry for lack of a visa. All goods exported after April 30, 1997 must be accompanied by an appropriate export visa.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to prohibit entry of certain textile products, produced or manufactured in the Slovak Republic and exported to the United

States for which the Government of the Slovak Republic has not issued an appropriate export visa.

A facsimile of the export visa stamp is on file at the U.S. Department of Commerce in Room 3100.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 61 FR 66263, published on December 17, 1996).

Interested persons are advised to take all necessary steps to ensure that textile products that are entered into the United States for consumption, or withdrawn from warehouse for consumption, will meet the visa requirements set forth in the letter published below to the Commissioner of Customs.

Dated: March 5, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 5, 1997.

Commissioner of Customs, *Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act, the Uruguay Round Agreement on Textiles and Clothing (ATC), and the Export Visa Arrangement, effected by exchange of notes dated November 18, 1996 and January 31, 1997 between the Governments of the United States and the Slovak Republic; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on April 1, 1997, entry into the Customs territory of the United States (i.e., the 50 states, the District of Columbia and the Commonwealth of Puerto Rico) for consumption and withdrawal from warehouse for consumption of wool textile products in Categories 410, 433, 435 and 443, produced or manufactured in Slovakia and exported on and after April 1, 1997 for which the Government of the Slovak Republic has not issued an appropriate export visa fully described below. Should merged categories or part categories become subject to import quota the merged or part categories shall be automatically included in the coverage of this arrangement. Merchandise in the merged or part category(s) exported on or after the date the merged or part category(s) becomes subject to import quotas shall require a visa. Goods exported during the period April 1, 1997 through April 30, 1997 shall not be denied entry for lack of an export visa.

A visa must accompany each commercial shipment of the aforementioned textile products. A circular stamped marking in blue ink will appear on the front of the original commercial invoice or successor document. The original visa shall not be stamped on duplicate copies of the invoice. The original invoice with the original visa stamp will be required to enter the shipment into the United States. Duplicates of the invoice and/or visa may not be used for this purpose.

Each visa stamp shall include the following information:

1. The visa number. The visa number shall be in the standard nine digit letter format, beginning with one numeric digit for the last digit of the year of export, followed by the two character alpha country code specified by the International Organization for Standardization (ISO) (the code for Slovakia is ''SK''), and a six digit numerical serial number identifying the shipment; e.g., 7SK123456.

2. The date of issuance. The date of issuance shall be the day, month and year on which the visa was issued.

3. The original signature of the issuing official and the printed name of the issuing official of the Government of the Slovak Republic.

4. The correct category(s), merged category(s), part category(s), quantity(s) and unit(s) of quantity in the shipment as set forth in the U.S. Department of Commerce Correlation and in the Harmonized Tariff Schedule of the United States, annotated or successor documents shall be reported in the spaces provided within the visa stamp (e.g., ''Cat. 340–510 DOZ'').

Quantities must be stated in whole numbers. Decimals or fractions will not be accepted. Merged category quota merchandise may be accompanied by either the appropriate merged category visa or the correct category visa corresponding to the actual shipment (e.g., Categories 347/348 may be visaed as 347/348 or if the shipment consists solely of 347 merchandise, the shipment may be visaed as ''Cat. 347,'' but not as ''Cat. 348.''). If, however, a merged quota category such as 340/640 has a quota sublimit on Category 340, then there must be a ''Category 340'' visa for the shipment if it includes Category 340 merchandise.

U.S. Customs shall not permit entry if the shipment does not have a visa, or if the visa number, date of issuance, signature, printed name of the signer, category, quantity or units of quantity are missing, incorrect or illegible, or have been crossed out or altered in any way. If the quantity indicated on the visa is less than that of the shipment, entry shall not be permitted. If the quantity indicated on the visa is more than that of the shipment, entry shall be permitted and only the amount entered shall be charged to any applicable quota.

The complete name and address of a company actually involved in the manufacturing process of the textile product covered by the visa shall be provided on the textile visa document.

If the visa is not acceptable then a new correct visa or a visa waiver must be presented to the U.S. Customs Service before any portion of the shipment will be released. A visa waiver may be issued by the U.S. Department of Commerce at the request of the Embassy in Washington for the Government of Slovakia. The waiver, if used, only waives the requirement to present a visa with the shipment. It does not waive the quota requirements. Visa waivers will only be issued for classification purposes or for one time special purpose shipments that are not part of an ongoing commercial enterprise.

If the visaed invoice is deficient, the U.S. Customs Service will not return the original document after entry, but will provide a certified copy of that visaed invoice for use in obtaining a new correct original visaed invoice, or a visa waiver.

If import quotas are in force, U.S. Customs Service shall charge only the actual quantity in the shipment to the correct category limit. If a shipment from Slovakia has been allowed entry into the commerce of the United States with either an incorrect visa or no visa, and redelivery is requested but cannot be made, the shipment will be charged to the correct category limit whether or not a replacement visa or waiver is provided.

Merchandise imported for the personal use of the importer and not for resale, regardless of value, and properly marked commercial sample shipments valued at U.S.$250 or less do not require an export visa for entry and shall not be charged to agreement levels, if applicable.

A facsimile of the visa stamp is enclosed.

The actions taken concerning the Government of the Slovak Republic with respect to imports of textiles and textile products in the foregoing categories have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1). This letter will be published in the Federal Register.

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–5863 Filed 3–7–97; 8:45 am]

BILLING CODE 3510–DR–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Collection: Comment Request

March 4, 1997.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (CNCS), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. § 3508(c)(2)(A)). This program helps to ensure that requested data can be provided in the

desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed. Currently, the Corporation for National and Community Service is soliciting comments concerning the forms and instructions to be included in its proposed applications entitled: The 1998 Application Guidelines for Learn and Serve America: Higher Education; The 1998 Application Guidelines for School- and Community-Based Programs; and the 1998 Application Guidelines for AmeriCorps National, State and Indian Tribes and U.S. Territories. Copies of the information collection requests (forms and instructions) can be obtained by contacting the office listed below in the address section of this notice.

DATES: Written comments must be submitted to the office listed in the addresses section on or before May 15, 1997.

The Corporation for National and Community Service is particularly interested in comments which:

Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;

Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

Enhance the quality, utility and clarity of the information to be collected; and

Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Send comments to Margaret Rosenberry, Corporation for National and Community Service, 1201 New York Ave., NW., Washington, DC 20525.

FOR FURTHER INFORMATION CONTACT: Jeffrey Gale, (202) 606–5000, ext. 188.

SUPPLEMENTARY INFORMATION:

Part I

I. Background

The 1998 Application Guidelines for Learn and Serve America, Higher Education provide the background, requirements and instructions that potential applicants need to apply to the Corporation for grants to operate Learn and Serve America service-learning programs for college-age youth.

II. Current Action

The Corporation for National and Community Service seeks public comment on the forms, the instructions for the forms, and the instructions for the narrative portions of these application guidelines.

Type of Review: New.

Agency: Corporation for National and Community Service.

Title: The 1998 Application Guidelines for Learn and Serve America, Higher Education.

OMB Number: None.

Agency Number: None.

Affected Public: Eligible applicants to the Corporation for grant funds.

Total Respondents: 400.

Frequency: Once per year.

Average Time Per Response: six (6) hours.

Estimated Total Burden Hours: 2400 hours.

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintenance): 0.

Part II

I. Background

The 1998 Application Guidelines for School- and Community-Based Programs provide the background, requirements and instructions that potential applicants need to apply to the Corporation for grants to operate Learn and Serve America service-learning programs for school-age youth.

II. Current Action

The Corporation for National and Community Service seeks public comment on the forms, the instructions for the forms, and the instructions for the narrative portions of these application guidelines.

Type of Review: New.

Agency: Corporation for National and Community Service.

Title: The 1998 Application Guidelines for School- and Community Based Programs.

OMB Number: None.

Agency Number: None.

Affected Public: Potential applicants to the Corporation for grant funds.

Total Respondents: 225.

Frequency: Once per year.

Average Time Per Response: Ten (10) hours.

Estimated Total Burden Hours: 2250 hours.

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintenance): 0.

Part III

I. Background

The 1998 Application Guidelines for AmeriCorps National, State, Indian Tribes and U.S. Territories provide the background, requirements and instructions that potential applicants need to complete an application to the Corporation for funds to operate AmeriCorps programs.

II. Current Action

The Corporation for National and Community Service seeks public comment on the forms, the instructions for the forms, and the instructions for the narrative portions of these application guidelines.

Type of Review: New.

Agency: Corporation for National and Community Service.

Title: The 1998 Application Guidelines for AmeriCorps National, State and Indian Tribes and U.S. Territories.

OMB Number: None.

Agency Number: None.

Affected Public: Eligible applications to the Corporation for funding.

Total Respondents: 2000.

Frequency: Once per year.

Average Time Per Response: Ten (10) hours.

Estimated Total Burden Hours: 20,000.

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintenance): 0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: March 4, 1997.

Magaret Rosenberry,

Planning and Program Development Director.

[FR Doc. 97–5847 Filed 3–7–97; 8:45 am]

BILLING CODE 6050–28–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and Associated Form: Pentagon Reservation Parking Permit Application,

DD Form 1199, OMB Number 0704—(to be added).

Type of Request: New Collection.

Number of Respondents: 20,000.

Responses Per Respondent: 1.

Annual Responses: 20,000.

Average Burden Per Response: 15 minutes.

Annual Burden Hours: 5,000.

Needs and Uses: This collection of information is necessary for the administration and management of the Pentagon's Parking Control Program, and is designed to meet the requirements of the Federal Government mandated car pool program. The information collected hereby, will enable parking management personnel to validate parking requirements and monitor authorized parking on the Pentagon reservation.

Affected Public: Individuals or households.

Frequency: On occasion and annually.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: March 5, 1997.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–5871 Filed 3–7–97; 8:45 am]

BILLING CODE 5000–04–M

Strategic Environmental Research and Development Program; Scientific Advisory Board Meeting

ACTION: Modification of notice published on February 14, 1997 (62 FR 6954).

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee meeting.

DATE OF MEETING: April 22, 1997 from 0830 to approximately 1700 and April 23, 1997 from 0800 to approximately 1600.

PLACE: Crown Plaza Hotel, 15 West Sixth Street, Cincinnati, OH.

Matters to be Considered: Research and Development proposals and continuing projects requesting Strategic Environmental Research and Development Program funds in excess of $1M will be reviewed.

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the Scientific Advisory Board at the time and in the manner permitted by the Board.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly Kay, 8000 Westpark Drive, Suite 400, McLean, VA 22102, or telephone 703 506–1400 extension 552.

Dated: March 5, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–5872 Filed 3–7–97; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Supplemental Environmental Assessment and Finding of no Significant Impact for the Relocation of the 1111th Signal Battalion, The 1108th Signal Brigade, Information Systems Engineering Command-Conus Elements, and Related Units (MP Company) and Discretionary Moves of Technical Applications Office and Information Mission Area BRAC Office From Fort Ritchie, Maryland, to Fort Detrick, Maryland

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: In accordance with Public Law 101–510, the Defense Base Closure and Realignment Act of 1990, the Defense Base Closure and Realignment Commission recommended the relocation of the 1111th Signal Battalion, the 1108th Signal Brigade, a portion of the Information Systems Engineering Command-CONUS, and associated Base Operations support personnel from Fort Ritchie, Maryland, to Fort Detrick, Maryland. The Army will also relocate the Technical Applications Office (TAO) and the Information Mission Area Base Realignment and Closure Office (IMA BRAC Office) to Fort Detrick, Maryland, pursuant to this recommendation.

An Environmental Assessment (EA) was prepared in June 1996 resulting in a Finding of No Significant Impact (FNSI). Since that EA was prepared, the number of personnel affected by the realignment has changed slightly for a net increase of 17 personnel (1,164 total). Additionally, several new construction projects have been added including a military police company operations building; a separate storage facility as an addition to the administration building described in the June 1996 EA; a physical fitness center; and a proposed dining facility. Also, renovations to existing facilities will accommodate the TAO secure administration space and administrative space for the IMA BRACO. These changes resulted in the need for this supplemental EA.

The supplemental EA identified no significant adverse environmental impacts. There is a potential for only minor or insignificant impacts in the areas of noise, water quality, stormwater, geology, soil, asbestos management, radon management, and visual and aesthetic values. Minor adverse impacts will be avoided by implementing best management practices during construction, such as a stormwater management plan and a soil erosion control plan and by restricting construction to the hours of 7 a.m. to 7 p.m. Potential asbestos, lead-based paint, or radon impacts will be mitigated by conducting the proper testing before renovation (for asbestos and lead-based paint) or after construction (for radon) and taking mitigation actions as necessary. Geology and soil impacts will be avoided by conducting geotechnical studies before site development. Visual impacts will be avoided by grading and landscaping the construction sites that may be visible from the Nallin Farm complex and by turning off the lights on the physical fitness center playing fields by 10 p.m. Therefore, based on the analysis found in the supplemental EA, which is hereby incorporated into the Finding of No Significant Impact (FNSI), it is determined the implementation of the proposed action will not have significant individual or cumulative impacts on the quality of the natural or the human environment. Because no significant environmental impacts would result from implementation of the proposed action, an Environmental Impact Statement is not required and will not be prepared.

DATES: Public comments will be accepted on or before April 9, 1997.

ADDRESSES: Copies of the supplemental EA/FNSI may be obtained by writing to, and any inquiries and comments concerning the same should be addressed to, the Commander, U.S. Army Corps of Engineers, Baltimore District, ATTN: CENAB–PL–EM (Ms. Elizabeth Quarrick), P.O. Box 1715, Baltimore, Maryland 21203–1715, or by calling (410) 962–2886, or by sending a telefax to 410–962–4698. Copies of the supplemental EA/FNSI will also be available at the Fort Detrick Post Library

(Building 501) and the Fort Detrick U.S. Army Garrison Headquarters Public Affairs Office (Building 810). There will be a 30-day comment period on the supplemental EA/FNSI before the Army proceeds with the proposed action.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Quarrick at 410–962–2886.

Dated: March 4, 1997.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health) OASA (I,L&E).

[FR Doc. 97–5862 Filed 3–7–97; 8:45 am]

BILLING CODE 3710–08–M

Department of the Army, Corps of Engineers

Transfer of Jurisdiction of a Portion of Joliet Army Ammunition Plant to the Department of Agriculture for the Midewin National Tallgrass Prairie

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice.

SUMMARY: On November 6, 1996, in accordance with Pub. L. 104–106, Title XXIX, Subtitle A, entitled ''Illinois Land Conservation Act of 1995'', the Department of the Army signed a Secretariat Memorandum to transfer approximately 15,080.53 acres of land and improvements at Joliet Army Ammunition Plant, Illinois to the Department of Agriculture for use by the Forest Service as the Midewin National Tallgrass Prairie. The purpose of this notice is to effect that transfer pursuant to the provisions of Sec. 2912 (e)(2) of Pub. L. 104–106.

This is a partial transfer of the entire acreage contemplated by the statute. Additional transfers will be made in the future. A map dated December 4, 1996 and a legal description dated December 3, 1996 of the property which is the subject of the subject transfer, are on file with the U.S. Army Engineer District, Corps of Engineers, Louisville, Kentucky and the Office of the Regional Forester, USDA, Forest Service.

FOR FURTHER INFORMATION CONTACT: Mr. Charles E. Woods, 502–625–7104.

ADDRESSES: Documents are on file at locations:

1. U.S. Army Engineer District, Louisville, Corps of Engineers, P.O. Box 59, Louisville, Kentucky 40201–9889.
2. Office of the Regional Forester, USDA, Forest Service 310 W. Wisconsin Avenue, Milwaukee, Wisconsin 53203.

SUPPLEMENTARY INFORMATION: None.

Michael G. Barter,

Chief, Real Estate Division.

[FR Doc. 97–5869 Filed 3–7–97; 8:45 am]

BILLING CODE 3710–JB–M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Columbia River System Operation Review on Selecting an Operating Strategy for the Federal Columbia River Power System (FCRPS)

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of Availability of Record of Decision (ROD).

SUMMARY: This notice announces the availability of the ROD to select a system operating strategy for the FCRPS, as analyzed in the Columbia River System Operation Review (SOR) Environmental Impact Statement (EIS). To meet the need for a review of the multiple-purpose management of the FCRPS, four proposed actions were considered in the SOR EIS. This ROD applies solely to the decision BPA is making on the first of the four actions, selection of a system operating strategy. In response to the need to develop and implement a coordinated system operating strategy for the FCRPS, BPA has decided to: (1) Support recovery of fish species listed under the Endangered Species Act (ESA) by storing water during the fall and winter to meet spring and summer flow targets; (2) protect other resources by managing detrimental effects caused by operations for ESA species by establishing minimum summer reservoir levels, providing public safety through flood protection, and other actions; and (3) provide for reasonable power generation.

ADDRESSES: Copies of the ROD and EIS may be obtained by calling BPA's toll-free document request line: 1–800–622–4520.

FOR FURTHER INFORMATION CONTACT: Philip Thor, SOR Manager, Bonneville Power Administration, P.O. Box 3621—PGF, Portland, Oregon, 97208–3621, phone number (503) 230–4235.

Issued in Portland, Oregon, on February 21, 1997.

Randall W. Hardy,

Administrator and Chief Executive Officer.

[FR Doc. 97–5829 Filed 3–7–97; 8:45 am]

BILLING CODE 6450–01–P

Office of Energy Research

Energy Research Financial Assistance Program Notice 97–08: Innovations in Fusion Energy Confinement Systems

AGENCY: Office of Energy Research, U.S. Department of Energy.

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Fusion Energy Sciences (OFES) of the Office of Energy Research, U.S. Department of Energy (DOE) announces its interest in receiving grant applications for innovative experiments in fusion energy confinement systems. Organizations with research projects funded under previous Notice 95–10 which are now due for continuation funding need not submit; however, those seeking renewal funding should submit a renewal application under this Notice. Successful applications will be funded early in FY 1998.

The Office of Fusion Energy Sciences is interested in applications for innovative experimental research that has the possibility of leading to improved fusion energy power plants (this includes tokamak based power plants with qualitatively improved performance). The research should be aimed at experimentally elucidating the physics principles involved. Research projects are sought which are unique, first of a kind and which provide new scientific insights. Although the main thrust of this initiative is experimental, consideration will be given to applications which are directed at scientific assessment of new concepts which are not ready for experimental investigation. Applications for research on existing large tokamaks, separate theory investigations, or initiatives in Inertial Fusion Energy should not be submitted in response to this notice. Collaborative applications submitted from different institutions which are directed at a single proposed experiment will be ''bundled'' and reviewed collectively.

DATES: To permit timely consideration for awards in Fiscal Year 1998 , applications submitted in response to this notice must be received no later than 4:30 p.m., May 15, 1997. No electronic submissions of formal applications will be accepted.

ADDRESSES: Completed formal applications referencing Program Notice 97–08 should be forwarded to: U.S. Department of Energy, Office of Energy Research, Grants and Contracts Division, ER–64, 19901 Germantown Road, Germantown, Maryland 20874–1290, ATTN: Program Notice 97–08.

The above address must also be used when submitting applications by U.S. Postal Service Express, any commercial mail delivery service, or when hand carried by the applicant.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Blanken, Science Division, ER–55, Office of Fusion Energy Sciences, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, Telephone: (301) 903–3306 or 3287, or by Internet address, ronald.blanken@mailgw.er.doe.gov.

SUPPLEMENTARY INFORMATION: In selecting applications for funding, the DOE Office of Fusion Energy Sciences will give priority to applications that can produce experimental results within three to five years after grant initiation. Theoretical research will be accepted for consideration under this Notice when ''bundled'' with and in support of an experimental application. The detailed description of the proposed project should contain the following items: (1) A detailed experimental research plan, (2) The specific results or deliverable expected at the end of the project period, (3) Goal of the experiment, (4) Synopsis of the experimental program plan, (5) Adequacy of the facilities and budget, (6) Discussion of why this research would have an important impact on the prospects for fusion energy power plants, and (7) Discussion of how the experiment would elucidate the physics principles of the innovation.

Applications concerned with scientific assessment of new concepts which are not ready for experimental investigation should have a well defined scope and a duration of no more than two years. These applications will be considered non-renewable. The product of such assessment would be a clear scientific description of the concept and its operation, its physics and engineering basis, critical analysis of major difficulties to be overcome in developing the concept as a net producer of energy through the fusion process, and an analysis of what would be achieved by moving to experimental research.

It is anticipated that up to $3,000,000 in FY 1998 will be available to start new projects from applications received in response to this Notice. The number of awards and range of funding will depend on the number of applications received and selected for award. Future year funding is anticipated to be greater but will depend on the nature of the applications, suitable experimental progress and the availability of funds. Because of the total amount of anticipated available funding and because of the intent to have a broadly based program, experimental applications with an annual requirement in any year in excess of $1,500,000 are unlikely to be funded. The cost-effectiveness of the application will be considered when comparing applications with differing funding requirements. Applications for scientific assessment of new concepts will be limited to a maximum of $150,000 in any year. Applications requiring annual funding as low as $50,000 are welcome and encouraged. To enable all reviewers to read all applications, the application must be limited to a maximum of twenty (20) pages (including text and figures) plus not more than one page each of biographical information and publications of the principal investigator, plus any additional forms required as a part of the standard grant application. An original and seven copies of each application must be submitted. Due to the anticipated number of reviewers, it would be helpful for each applicant to submit an additional seven copies of each application. In lieu of the seven additional copies, applicants may provide a 3.5-inch diskette containing the application in Portable Document Format (PDF). The label on the diskette must clearly identify the institution, principal investigator, and title of the application. (If the applicant elects to submit a diskette, an original and seven copies of the application must still be submitted.) Applications will be subjected to formal merit review and will be evaluated against the following criteria, which are listed in descending order of importance as set forth in 10 CFR Part 605:

1. Scientific and/or technical merit of the project;

2. Appropriateness of the proposed method or approach;

3. Competency of the applicant's personnel and adequacy of the proposed resources; and

4. Reasonableness and appropriateness of the proposed budget.

The evaluation will include program policy factors such as the relevance of the proposed research to the terms of the announcement and the agency's programmatic needs. General information about development and submission of applications, eligibility, limitations, evaluations and selection processes, and other policies and procedures may be found in the Application Guide for the Office of Energy Research Financial Assistance Program and 10 CFR Part 605. Electronic access to the Application Guide is possible via the Internet using the following Web site address: http://www.er.doe.gov/ production/grants/grants.html.

The Catalog of Federal Domestic Assistance number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR Part 605.

Issued in Washington, DC, on February 27, 1997.

John Rodney Clark,

Associate Director for Resource Management, Office of Energy Research.

[FR Doc. 97–5830 Filed 3–7–97; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. RP97–63–002]

Notice of Tariff Compliance Filing

March 4, 1997.

Take notice that on February 28, 1997, Colorado Interstate Gas Company (CIG), tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed in Appendix A to the filing, to be effective May 1, 1997.

CIG states the tariff sheets are filed in compliance with Order No. 587, and the order issued January 16, 1997, in Docket No. RP97–63–000, as well as Section 154.203 of the Commission's regulations. CIG further states the tariff sheets filed are the same as the pro forma tariff sheets filed by CIG on November 1, 1996 to comply with Order No. 487 except (1) the tariff sheets have been revised to reflect tariff filings made between the November 1, 1996 filing and the date of this filing, (2) changes have been made to comply with the requirements of the order issued January 16, 1997 in Docket No. RP97–63–000 and, (3) as required in Order No. 587–B issued January 30, 1997, CIG is incorporating by reference into its tariff the Electronic Delivery Mechanism (EDM) standards adopted in that rule.

CIG has further requested any waivers necessary to change its Gas Day to the GISB Standard effective April 7, 1997.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Regulations. All such protests must be filed on or before March 21, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are

available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5757 Filed 3–7–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–9–23–000]

Eastern Shore Natural Gas Company; Notice of Tariff Filing

March 4, 1997.

Take notice that on February 27, 1997, Eastern Shore Natural Gas Company (Eastern Shore) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, certain revised tariff sheets, with a proposed effective date of April 1, 1997.

Eastern Shore states that the purpose of the filing is to track the cost of storage service purchased from Columbia Gas Transmission Corporation under their Rate Schedules FSS and SST, the costs of which are included in the rates payable under Eastern Shore's Rate Schedules CWS and CFSS, respectively.

Eastern Shore states that copies of the filing are being mailed to affected customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5761 Filed 3–7–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–366–004]

Florida Gas Transmission Company; Notice of Filing of Revised Rates and Motion To Place Suspended Rates, As Revised, and Suspended Tariff Sheets Into Effect

Take notice that on February 27, 1997, the Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1 the revised tariff sheets identified on Attachment A hereto.

FGT states that pursuant to Section 4(e) of the Natural Gas Act (NGA) and Sections 154.7, 154.201, et seq., and 154.301, et seq. of the Regulations of the Federal Regulatory Commission (Commission), it filed on August 30, 1996 in the instant docket, revised tariff sheets to effectuate increases in rates and changes in the terms and conditions applicable to FGT's jurisdictional services, proposed to become effective on October 1, 1996.

FGT states that by order dated September 30, 1996 (September 30 Order), the Commission accepted the revised tariff sheets for filing and suspended them to become effective on March 1, 1997, subject to refund and subject to conditions stated in the September 30 Order. Ordering Paragraph (A) of the September 30 Order directed FGT to refile tariff sheets to reflect the correct Annual Charge Adjustment (ACA) and the elimination of costs of facilities not in service by the end of the test period, at the time FGT filed its motion to place the suspended rates into effect.

FGT also states that on December 10, 1996, FGT and its customers filed a settlement in the instant docket, which resolved certain operational issues (Operational Settlement). The Operational Settlement was approved by the Commission order dated January 16, 1997 (January 16 Order). The Operational Settlement provided that FGT would withdraw its request to acquire third party storage capacity and remove the costs associated with such storage from its proposed rates.

FGT states that the rates contained on the tariff sheets filed herewith reflect the elimination of the costs of facilities not in service by the end of the test period and the removal of the costs associated with FTS's proposed acquisitions of third party storage capacity. FGT has moved that such rates be placed in effect on March 1, 1997.

In addition, FGT states that it is moving into effect the tariff sheets listed on Attachment B hereto which have not been revised from FGT's filing on August 30, 1996.

Any person desiring to protest said filing should file a motion protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before March 11, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public Reference Room.

Lois D. Cashell,

Secretary.

Attachment A

2nd Substitute Eighteenth Revised Sheet No. 8A
2nd Substitute Eleventh Revised Sheet No. 8A.01
2nd Substitute Tenth Revised Sheet No. 8A.02
2nd Substitute 16th Revised Sheet No. 8B
2nd Substitute Ninth Revised Sheet No. 8B.01

Attachment B

Third Revised VOlume No. 1

First Revised Sheet No. 35
Third Revised Sheet No. 37
Third Revised Sheet No. 39
Fourth Revised Sheet No. 46 [1]

Second Revised Sheet No. 181
Fifth Revised Sheet No. 183
First Revised Sheet No. 197D [1]
First Revised Sheet No. 482
First Revised Sheet No. 484
Third Revised Sheet No. 486
First Revised Sheet No. 488
Second Revised Sheet No. 490
First Revised Sheet No. 492
First Revised Sheet No. 511
First Revised Sheet No. 513
Third Revised Sheet No. 515
First Revised Sheet No. 517
Second Revised Sheet No. 519
First Revised Sheet No. 521
Third Revised Sheet No. 36
First Revised Sheet No. 38
Third Revised Sheet No. 40
First Revised Sheet No. 149D
Fourth Revised Sheet No. 182
Third Revised Sheet No. 184
First Revised Sheet No. 481
Second Revised Sheet No. 483
Second Revised Sheet No. 485
First Revised Sheet No. 487
First Revised Sheet No. 489
First Revised Sheet No. 491
First Revised Sheet No. 510
Second Revised Sheet No. 512
Second Revised Sheet No. 514
First Revised Sheet No. 516
First Revised Sheet No. 518
First Revised Sheet No. 520

Original Volume No. 3

Substitute Tenth Revised Sheet No. 181
Substitute First Revised Sheet No. 182
Substitute Tenth Revised Sheet No. 395
Substitute Second Revised Sheet No. 452
Substitute Tenth Revised Sheet No. 453
Substitute Seventh Revised Sheet No. 486

[1] As to the elimination of revenue crediting; the changes to these sheets related to Western Division provisions were approved by Commission Order issued January 16, 1997 in Docket No. RP96–366–002.

Substitute Seventh Revised Sheet No. 549
Substitute Seventh Revised Sheet No. 584
[FR Doc. 97–5753 Filed 3–7–97; 8:45 am

BILLING CODE 6717–01–M

[Docket No. RP97–21–002]

Florida Gas Transmission Company; Notice of Compliance Filing

March 4, 1997.

Take notice that on February 28, 1997, Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1 the tariff sheets referenced on Attachment A to the filing, with an effective date of April 1, 1997.

FGT states that the instant filing is to (i) make effective the changes to the General Terms and Conditions (''GTC'') of FGT's Tariff which are necessary to implement Gas Industry Standards Board (''GISB'') standards which have been previously approved on a pro forma basis in Docket Nos. RP97–21–000 and RP97–21–001, (ii) incorporate the GISB data dictionary standards not previously incorporated by FGT as required by the February 12 Order, and (iii) incorporate the GISB Electronic Delivery Mechanism (''EDM'') standards adopted by the Commission in Order No. 587–B, all as required by the Commission's February 12, 1997 Order in Docket No. RP97–21–001.

In addition, in compliance with Order No. 587–B, FGT states that it is filing a complete table showing for each GISB standard adopted by the Commission in Order Nos. 587 and 587–B, the complying tariff sheet number.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5755 Filed 3–7–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER97–1315–000]

HorizEn Energy Corp.; Notice of Issuance of Order

March 5, 1997.

HorizEn Energy Corp. (HorizEn) submitted for filing a rate schedule under which HorizEn will engage in wholesale electric power and energy transactions as a marketer. HorizEn also requested waiver of various Commission regulations. In particular, HorizEn requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by HorizEn.

On February 24, 1997, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by HorizEn should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, HorizEn is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance of assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of HorizEn's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is March 26, 1997. Copies of the full text of the order are available from the Commission's Rules Reference Branch, 888 First Street, N.E. Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5826 Filed 3–7–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–257–000]

Koch Gateway Pipeline Company; Notice of Application

March 4, 1997.

Take notice that on February 21, 1997, Koch Gateway Pipeline Company (Koch Gateway), P.O. Box 1478, Houston, Texas 77521–1478, filed in Docket No. CP97–257–000 pursuant to Section 7(b) of the Natural Gas Act and Section 157.18 of the Commission's Regulations for permission and approval to abandon approximately 893 feet of 10-inch pipeline and 95 feet of 14-inch pipeline, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Koch Gateway seeks to abandon by removal approximately 150 feet of 10-inch pipeline and 2 feet of 14-inch pipeline, and abandon in place approximately 743 feet of 10-inch pipeline and 93 feet of 14-inch pipeline. The pipeline proposed for abandonment is the northernmost tube of three tubes which run parallel and are known as the Sabine River Crossing on Koch Gateway's Call Junction Line, in Beauregard Parish, Louisiana and Newton County, Texas. Koch Gateway states that the northernmost tube is damaged and out of service. Further, Koch Gateway says that a 150 foot segment of the pipeline which would be abandoned is exposed on the east side of the river.

Any person desiring to be heard or to make any protest with reference to said application should, on or before March 25, 1997, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the

Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval of abandonment is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedures herein provided for, unless otherwise advised, it will be unnecessary for Koch Gateway to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5749 Filed 3–7–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–64–002]

Natural Gas Pipeline Company of America; Notice of Compliance Filing

March 4, 1997.

Take notice that on February 28, 1997, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, certain tariff sheets to be effective May 1, 1997.

Natural states that the purpose of the filing is to: (1) Reflect changes in its tariff to conform to the standards adopted by the Gas Industry Standards Board and incorporated into the Federal Energy Regulatory Commission's (Commission) Regulations by Order Nos. 587 and 587–B; and (2) comply with the Commission's Order issued December 23, 1996, in Docket No. RP97–64–000.

Natural states that copies of the filing are being mailed to its jurisdictional customers, all parties set out on the official service list at Docket No. RP97–64–000, and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before March 21, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5758 Filed 3–7–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–270–000]

Northern Natural Gas Company; Notice of Request Under Blanket Authorization

March 4, 1997.

Take notice that on February 26, 1997, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68103, filed in Docket No. CP97–270–000 a request pursuant to Sections 157.205 and 157.216 (b) of the Commission's Regulations and Northern's blanket certificate issued at Docket No. CP82–401–000 for authorization to abandon the Jefferson #3 TBS in Union County, South Dakota, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern states that they have been advised by the local distribution company that this station is no longer being used.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5750 Filed 3–7–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–3–28–000]

Panhandle Eastern Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

March 4, 1997.

Take notice that on February 28, 1997, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to become effective April 1, 1997.

Panhandle states that this filing is made in accordance with Section 24 (Fuel Reimbursement Adjustment) of the General Terms and Conditions in Panhandle's FERC Gas Tariff, First Revised Volume No. 1. The revised tariff sheets filed herewith reflect the following changes to the Fuel Reimbursement Percentages:

(1) No change in the Gathering Fuel Reimbursement Percentage;

(2) a 0.03% increase in the Field Zone Fuel Reimbursement Percentage;

(3) a 0.08% increase in the Market Zone Fuel Reimbursement Percentage;

(4) No change in the Field Area Storage Reimbursement Percentages; and

(5) No change in the Market Area Storage Fuel Reimbursement Percentages.

Panhandle states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5758 Filed 3–7–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER97–1084–000]

Power Access Management, Notice of Issuance of Order

March 5, 1997.

Power Access Management (PAM) submitted for filing a rate schedule under which PAM will engage in wholesale electric power and energy transactions as a marketer. PAM also requested waiver of various Commission regulations. In particular, PAM requested that the Commission grant

blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by PAM.

On February 19, 1997, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by PAM should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, PAM is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of PAM's issuances of securities or assumptions of liability.

Notice is hereby given that he deadline for filing motions to intervene or protests, as set forth above, is March 21, 1997. Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E. Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5824 Filed 3–7–97; 8:45 am]

BILLING CODE 6717–01–N

[Docket No. ER97–1117–000]

TC Power Solutions; Notice of Issuance of Order

March 5, 1997.

TC Power Solutions (TC Power) submitted for filing a rate schedule under which TC Power will engage in wholesale electric power and energy transactions as a marketer. TC Power also requested waiver of various Commission regulations. In particular, TC Power requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by TC Power.

On February 18, 1997, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by TC Power should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, TC Power is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of TC Power's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is March 20, 1997. Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5825 Filed 3–7–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–338–002]

Texas Eastern Transmission Corporation; Notice of Compliance Filing

March 4, 1997.

Take notice that on February 28, 1997, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets to become effective March 1, 1997:

Substitute Original Sheet No. 606
Substitute Original Sheet No. 607
Original Sheet No. 608
Sheet Nos. 609–615

Texas Eastern asserts that the purpose of this filing is to comply with the Commission's order issued February 18, 1997 in Docket Nos. RP96–338–000 and RP96–338–001.

Texas Eastern states that in compliance with the February 18 Order, this filing reflects in the General Terms and Conditions (GT&C) of its FERC Gas Tariff (1) the pro forma revisions that were submitted in its November 1, 1996 initial comments in this proceeding and (2) a provision stating that ''MDDO'' and/or ''MDRO'' capacity is not considered to be ''Section 14.9 Firm Capacity'' and is therefore not subject to potential reduction pursuant to GT&C Section 14.10.

Texas Eastern states that copies of the filing were served on firm customers of Texas Eastern, interested state commissions and parties to the proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5752 Filed 3–7–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP95–197–026 AND RP96–211–009]

Transcontinental Gas Pipe Line Corporation; Notice of Compliance Filing

March 4, 1997.

Take notice that on February 26, 1997, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed in Appendix A to that filing, to become effective January 3, 1997.

Transco asserts that the purpose of this filing is to comply with the Commission's ''Order on Compliance Filing,'' issued on January 31, 1997, in Docket Nos. RP95–197–021 and RP96–211–006 which directed Transco to file

revised tariff sheets within 30 days from the date of the order to modify certain tariff provisions governing exemptions from pro rata capacity allocation for shippers in emergency curtailment situations.

Transco states that copies of the filing have been served upon its affected customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, Washington, DC 20426, in accordance with Section 385.211 of the Commission's rules and regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5751 Filed 3–7–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–18–003]

Transwestern Pipeline Company; Notice of Compliance Filing

March 4, 1997.

Take notice that on February 28, 1997, Transwestern Pipeline Company (Transwestern), tendered for filing to become part of Transwestern's FERC Gas Tariff the following tariff sheets proposed to become effective on April 1, 1997:

Second Revised Volume No. 1

Third Revised Sheet No. 49
Fourth Revised Sheet No. 58
Second Revised Sheet No. 61
Second Revised Sheet No. 62
Seventh Revised Sheet No. 63
Second Revised Sheet No. 63A
Seventh Revised Sheet No. 64
Second Revised Sheet No. 71
Twelfth Revised Sheet No. 80
Sixth Revised Sheet No. 80A
Seventh Revised Sheet No. 81A
First Revised Sheet No. 81E
Second Revised Sheet No. 95
Fifth Revised Sheet No. 95A
Fourth Revised Sheet No. 95B
Second Revised Sheet No. 95B.1
Sixth Revised Sheet No. 95C
Fifth Revised Sheet No. 95D
Fifth Revised Sheet No. 95E
Fifth Revised Sheet No. 95F
Fourth Revised Sheet No. 95G
Fourth Revised Sheet No. 95H
Second Revised Sheet No. 95I
Fourth Revised Sheet No. 95K
Third Revised Sheet No. 95L
Third Revised Sheet No. 95M–95P

Transwestern states that the instant filing is to (i) make effective changes to the General Terms and Conditions of Transwestern's tariff which are necessary to implement Gas Industry Standards Board (''GISB'') standards which have been previously approved by the Commission on a pro forma basis in Transwestern's compliance proceeding in Docket Nos. RP97–18–000 et al., filed on October 1, 1996 and December 16, 1996, (ii) incorporate the requirements of Order No. 587–B, issued January 30, 1997 in Docket No. RM96–1–003, and (iii) include references to the GISB definitions, datasets and standards not previously incorporated by Transwestern, all as required by the February 14 Order.

Transwestern states that copies of the filing were served upon Transwestern's customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make protestant a party to the proceeding. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5754 Filed 3–7–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–4–30–000]

Trunkline Gas Company; Notice of Proposed Changes in FERC Gas Tariff

March 4, 1997.

Take notice that on February 28, 1997, Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to become effective April 1, 1997:

Twentieth Revised Sheet No. 6
Nineteenth Revised Sheet No. 7
Twentieth Revised Sheet No. 8
Twentieth Revised Sheet No. 9
Second Revised Sheet No. 9A
Nineteenth Revised Sheet No. 10
Fifth Revised Sheet No. 10A

Trunkline states that this filing is being made in accordance with Section 22 (Fuel Reimbursement Adjustment) of Trunkline's FERC Gas Tariff, First Revised Volume No. 1. The revised tariff sheets reflect: a (0.14)% decrease (Field Zone to Zone 2), a (0.18)% decrease (Zone 1A to Zone 2), a (0.05)% decrease (Zone 1B to Zone 2), a 0.04% increase (Zone 2 only), a (0.19)% decrease (Field Zone to Zone 1B), a (0.23)% decrease (Zone 1A to Zone 1B), a (0.10)% decrease (Zone 1B only), a (0.10)% decrease (Field Zone to Zone 1A), a (0.14)% decrease (Zone 1A only) and a 0.03% increase (Field Zone only) to the currently effective fuel reimbursement percentages.

Trunkline states that copies of this filing are being served on all affected shippers and interested state regulatory agencies.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5760 Filed 3–7–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–62–002]

Wyoming Interstate Company Ltd.; Notice of Tariff Compliance Filing

March 4, 1997.

Take notice that on February 28, 1997, Wyoming Interstate Company Ltd. (WIC), tendered for filing to become part of its FERC gas tariff, Second Revised Volume No. 2, the tariff sheets listed in Appendix A to the filing, to be effective May 1, 1997.

WIC states the tariff sheets are filed in compliance with Order No. 587, and the order issued January 16, 1997 in Docket No. RP97–62–000, as well as Section 154.203 of the Commission's regulations. WIC further states the tariff sheets filed are the same as the pro forma tariff sheets filed by WIC on November 1, 1996 to comply with Order

No. 587 except (1) the tariff sheets have been revised to reflect tariff filings made between the November 1, 1996 filing and the date of this filing (2) changes have been made to comply with the requirements of the order issued January 16, 1997 in Docket No. RP97–62–000 and, (3) as required in Order No. 587–B issued January 30, 1997, WIC is incorporating by reference into its tariff the Electronic Delivery Mechanism (EDM) standards adopted in that rule.

WIC has further requested any waivers necessary to change its Gas Day to the GISB Standard effective April 7, 1997.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Regulations. All such protests must be filed on or before March 21, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5756 Filed 3–7–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER97–1693–000, et al.]

Commonwealth Edison Company, et al.; Electric Rate and Corporate Regulation Filings

March 4, 1997.

Take notice that the following filings have been made with the Commission:

1. Commonwealth Edison Company

[Docket No. ER97–1693–000]

Take notice that on February 14, 1997, Commonwealth Edison Company (ComEd), submitted for filing Service Agreements for various firm transactions established Duke/Louis Dreyfus L.L.C. (D/LD), Commonwealth Edison Company, in its wholesale merchant function (ComEd WMD), and Sonat Power Marketing LP (Sonat), as transmission customers under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd requests various effective dates, corresponding to the date each service agreement was entered into, and accordingly seeks waiver of the Commission's requirements. Copies of this filing were served upon D/LD, ComEd WMD, Sonat, and the Illinois Commerce Commission.

Comment date: March 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. Central Illinois Light Company

[Docket No. ER97–1740–000]

Take notice that on February 18, 1997, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61202, tendered for filing with the Commission a substitute Index of Customers under its Coordination Sales Tariff and service agreements for two new customers.

CILCO requested an effective date of February 15, 1997.

Copies of the filing were served on all affected customers parties and the Illinois Commerce Commission.

Comment date: March 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Florida Power & Light Company

[Docket No. ER97–1742–000]

On February 18, 1997, Florida Power & Light Company, filed Service Agreements with City of Homestead, Florida, Sonat Power Marketing L.P., and Tennessee Valley Authority for service pursuant to Tariff No. 1 for Sales of Power and Energy by Florida Power & Light. FPL requests that each Service Agreement be made effective on January 17, 1997.

Comment date: March 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Cinergy Services, Inc.

[Docket No. ER97–1746–000]

Take notice that on February 18, 1997, Cinergy Services, Inc., tendered for filing a Schematic and Exhibit Update to the Interconnection Agreement between PSI Energy, Inc. (PSI), the United States of America, Hoosier Energy Rural Electric Cooperative, Inc. (Hoosier), and Southern Indiana Gas and Electric Company (SIGECO).

Copies of the filing were served on Hoosier Energy Rural Electric Cooperative, Inc., Southern Indiana Gas and Electric Company and the Indiana Utility Regulatory Commission.

Comment date: March 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Pennsylvania Power & Light Company

[Docket No. ER97–1762–000]

Take notice that on February 19, 1997, Pennsylvania Power & Light Company (PP&L), filed a Service Agreement dated January 7, 1997, with Public Service Electric and Gas Company (Public) for non-firm point-to-point transmission service under PP&L's Open Access Transmission Tariff. The Service Agreement adds Public as an eligible customer under the Tariff.

PP&L requests an effective date of February 19, 1997, for the Service Agreement.

PP&L states that copies of this filing have been supplied to Public and to the Pennsylvania Public Utility Commission.

Comment date: March 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Minnesota Power & Light Company

[Docket No. ER97–1763–000]

Take notice that on February 19, 1997, Minnesota Power & Light Company (MP), tendered for filing a copy of umbrella service agreements under which short-term transactions may be made in accordance with MP's market-based Wholesale Coordination Sales Tariff WCS–2, which was accepted for filing by the Commission in Docket No. ER96–1823–000 for the following:

Cinergy Services, Inc.
Citizens Lehman Power Sales
Coastal Electric Services Company
Duke/Louis Dreyfus LLC
Entergy
InterCoast Power Marketing Company
Interstate Power Company
PacifiCorp
The Power Company of America
Rainbow Energy Marketing Corporation
Sonat Power Marketing L.P.
Upper Peninsula Power Company
Western Power Services, Inc.
Western Resources Inc.

Comment date: March 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Pennsylvania Power & Light Co.

[Docket No. ER97–1764–000]

Take notice that on February 19, 1997, Pennsylvania Power & Light Company (PP&L), filed a Service Agreement dated December 17, 1996, with Northeast Utilities Marketing (Northeast) for non-firm point-to-point transmission service under PP&L's Open Access Transmission Tariff. The Service Agreement adds Northeast as an eligible customer under the Tariff.

PP&L requests an effective date of February 1, 1997, for the Service Agreement.

PP&L states that copies of this filing have been supplied to Northeast and to the Pennsylvania Public Utility Commission.

Comment date: March 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Pennsylvania Power & Light Company

[Docket No. ER97–1765–000]

Take notice that on February 19, 1997, Pennsylvania Power & Light Company (PP&L), filed a Service Agreement dated December 27, 1996, with Cenerprise, Inc. (Cenerprise) for non-firm point-to-point transmission service under PP&L's Open Access Transmission Tariff. The Service Agreement adds Cenerprise as an eligible customer under the Tariff.

PP&L requests an effective date of February 19, 1997, for the Service Agreement.

PP&L states that copies of this filing have been supplied to Cenerprise and to the Pennsylvania Public Utility Commission.

Comment date: March 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Consolidated Edison Company of New York, Inc.

[Docket No. ER97–1766–000]

Take notice that on February 19, 1997, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing an amendment to Rate Schedule 68, an agreement with Morgan Stanley Capital Group, Inc. (Morgan Stanley) for the sale and purchase of energy and capacity.

Con Edison states that a copy of this filing has been served by mail upon Morgan Stanley.

Comment date: March 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Southern Indiana Gas and Electric Company

[Docket No. ER97–1767–000]

Take notice that on February 19, 1997, Southern Indiana Gas and Electric Company (SIGECO), tendered for filing one (1) service agreement for market based rate power sales under its Market Based Rate Tariff with Williams Energy Services Company.

Copies of the filing were served upon each of the parties to the service agreements.

Comment date: March 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Commonwealth Electric Company

[Docket No. ER97–1768–000]

Take notice that on February 19, 1997, Commonwealth Electric Company (Commonwealth), tendered for filing a non-firm point-to-point transmission service agreement between Commonwealth and Green Mountain Power Corporation (Green Mountain). Commonwealth states that the service agreement sets out the transmission arrangements under which Commonwealth will provide non-firm point-to-point transmission service to Green Mountain under Commonwealth's FERC Electric Tariff, Original Volume No. 6, accepted for filing in Docket No. OA96–167–000.

Comment date: March 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Minnesota Power & Light Company

[Docket No. ER97–1769–000]

Take Notice that on February 19, 1997, Minnesota Power & Light Company (MP), tendered for filing Supplement No. 4 to its Electric Service Agreement with Public Utilities Commission of Brainerd, Minnesota (Brainerd). MP states that the amendment extends the term of the Agreement to December 31, 2011.

Comment date: March 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Pacific Northwest Generating Cooperative

[Docket No. ER97–1770–000]

Take notice that on February 19, 1997, Pacific Northwest Generating Cooperative (PNGC), filed a service agreement for a short-term transaction with Citizens Lehman Power Sales. The service agreement incorporated terms and conditions of the Western Systems Power Pool Agreement and was made on price terms conforming to PNGC's Rate Schedule FERC No. 3 (market-based rate schedule).

Comment date: March 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Wisconsin Power and Light Company

[Docket No. ER97–1772–000]

Take notice that on February 19, 1997, Wisconsin Power and Light Company (WP&L), tendered for filing Form of Service Agreements for Customers who have signed WP&L's Final Order pro forma transmission tariff submitted in Docket No. OA96–20–000. The customers are Madison Gas and Electric Company and WPS Energy Services, Inc. The customers previously signed earlier versions of WP&L's transmission tariffs.

WP&L requests an effective date of July 9, 1996, and accordingly seeks waiver of the Commission's notice requirements. A copy of this filing has been served upon the Public Service Commission of Wisconsin.

Comment date: March 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

[Docket No. ES97–24–000]

15. American REF-FUEL Company of Hempstead

Take notice that on February 21, 1997, American REF-FUEL Company of Hempstead (''Hempstead''), tendered for filing pursuant to § 204 of the Federal Power Act, 16 U.S.C. 824c, and Part 34 of the Federal Energy Regulatory Commission's Regulations, 18 CFR Part 34, an Application requesting authority for Hempstead to assume a March 1, 1997, obligation as a guarantor in connection with the issuance of long-term Series 1997 Bonds (''1997 Bonds'') in the principal amount of $246,805,000 by the Town of Hempstead Industrial Development Agency (''Agency'').

The 1997 Bonds are being issued to refund all outstanding bonds issued by the Agency in 1985. Pursuant to a Lessee Guaranty and Security Agreement, Hempstead has guaranteed the payment of the principal of, premium, if any, and interest on the 1997 Bonds. Hempstead's payment obligation is, however, limited to the amount that Hempstead is required to make as lease payments under the Lease Agreement between Hempstead and the Agency. Hempstead has also pledged, assigned, and granted a security interest to Chase Manhattan Bank, as Trustee, in all of Hempstead's right, title and interest in the Service Agreement, Energy Purchase Agreement, and the Company Support Agreement.

Comment date: March 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

[Docket No. ID–2859–001]

16. William J. Gremp

Take notice that on February 24, 1997, William J. Gremp (Applicant), tendered for filing an application under Section 305(b) to hold the following positions:

Director—St. Joseph Light & Power Company (''St. Joseph''), 520 Francis Street, St. Joseph, Missouri 64502

Senior Vice President and Managing Director, Utilities and Strategic Finance Group—First Union Corporation 301 South College Street Charlotte, North Carolina 28288–0735.

Comment date: March 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

[Docket No. OA97–499–000]

17. Cleveland Electric Illuminating Company

Take notice that on January 13, 1997, The Cleveland Electric Illuminating Company (''CEI'') tendered for filing an Amended and Restated Power Sales

Agreement (''Agreement'') by and between CL Power Sales Two, L.L.C. (''CL Two'') and CEI. The Agreement originally was filed on September 19, 1995 in Docket No. ER95–1795–000 and is designated as CEI's FERC Electric Rate Schedule No. 32.

CEI states that a copy of the filing has been served on CL Two and the Public Utilities Commission of Ohio.

Comment date: March 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

[Docket No. OA97–530–000]

18. Ohio Edison Company Pennsylvania Power Company

Take notice that on February 21, 1997, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, a Supplement to the rate schedule to the Agreement for System Power Transactions with AES Power, Incorporated. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: March 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

[Docket No. OA97–531–000]

19. Ohio Edison Company Pennsylvania Power Company

Take notice that on February 21, 1997, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, a Supplement to the rate schedule to the Agreement for System Power Transactions with Aquila Power Corporation. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: March 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

[Docket No. OA97–532–000]

20. Ohio Edison Company Pennsylvania Power Company

Take notice that on February 21, 1997, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, a Supplement to the rate schedule to the Agreement for System Power Transactions with Morgan Stanley Capital Group, Inc. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: March 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

[Docket No. OA97–533–000]

21. Ohio Edison Company Pennsylvania Power Company

Take notice that on February 21, 1997, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, a Supplement to the rate schedule to the Agreement for System Power Transactions with NorAm Energy Services, Inc. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: March 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

[Docket No. OA97–534–000]

22. Ohio Edison Company Pennsylvania Power Company

Take notice that on February 21, 1997, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, a Supplement to the rate schedule to the Agreement for System Power Transactions with Carolina Power & Light Company. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: March 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Ohio Edison Company, Pennsylvania Power Company

[Docket No. OA97–535–000]

Take notice that on February 21, 1997, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, a Supplement to the rate schedule to the Agreement for System Power Transactions with CNG Power Services Corp. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: March 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Ohio Edison Company, Pennsylvania Power Company

[Docket No. OA97–536–000]

Take notice that on February 21, 1997, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, a Supplement to the rate schedule to the Agreement for System Power Transactions with Old Dominion Electric Cooperative. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: March 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. Ohio Edison Company, Pennsylvania Power Company

[Docket No. OA97–537–000]

Take notice that on February 21, 1997, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, a Supplement to the rate schedule to the Agreement for System Power Transactions with Coastal Electric Services Company. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: March 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. Ohio Edison Company, Pennsylvania Power Company

[Docket No. OA97–538–000]

Take notice that on February 21, 1997, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, a Supplement to the rate schedule to the Agreement for System Power Transactions with PECO Energy Company. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: March 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

27. Ohio Edison Company, Pennsylvania Power Company

[Docket No. OA97–540–000]

Take notice that on February 21, 1997, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, a Supplement to the rate schedule to the Agreement for System Power Transactions with Western Power Services, Inc. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: March 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

28. Ohio Edison Company, Pennsylvania Power Company

[Docket No. OA97–541–000]

Take notice that on February 21, 1997, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, a Supplement to the rate schedule to the Agreement for System Power Transactions with Vitol Gas & Electric, LLC. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: March 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

29. Ohio Edison Company, Pennsylvania Power Company

[Docket No. OA97–542–000]

Take notice that on February 21, 1997, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, a Supplement to the rate schedule to the Agreement for System Power Transactions with Heartland Energy Services, Inc. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: March 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

30. Ohio Edison Company, Pennsylvania Power Company

[Docket No. OA97–543–000]

Take notice that on February 21, 1997, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, a Supplement to the rate schedule to the Agreement for System Power Transactions with City of Dover. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: March 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

31. Ohio Edison Company, Pennsylvania Power Company

[Docket No. OA97–544–000]

Take notice that on February 21, 1997, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, a Supplement to the rate schedule to the Agreement for System Power Transactions with LG&E Power Marketing, Inc. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: March 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

32. Ohio Edison Company, Pennsylvania Power Company

[Docket No. OA97–545–000]

Take notice that on February 21, 1997, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, a Supplement to the rate schedule to the Agreement for System Power Transactions with Enron Power Marketing, Inc. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: March 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

33. Ohio Edison Company, Pennsylvania Power Company

[Docket No. OA97–546–000]

Take notice that on February 21, 1997, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, a Supplement to the rate schedule to the Agreement for System Power Transactions with Atlantic City Electric Company. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: March 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

34. Ohio Edison Company, Pennsylvania Power Company

[Docket No. OA97–547–000]

Take notice that on February 21, 1997, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, a Supplement to the rate schedule to the Agreement for System Power Transactions with Electric Clearinghouse, Inc. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: March 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

35. Ohio Edison Company, Pennsylvania Power Company

[Docket No. OA97–548–000]

Take notice that on February 21, 1997, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, a Supplement to the rate schedule to the Agreement for System Power Transactions with Federal Energy Sales, Inc. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: March 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

36. Ohio Edison Company, Pennsylvania Power Company

[Docket No. OA97–549–000]

Take notice that on February 21, 1997, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, a Supplement to the rate schedule to the Agreement for System Power Transactions with Stand Energy Corporation. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: March 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

37. Ohio Edison Company, Pennsylvania Power Company

[Docket No. OA97–550–000]

Take notice that on February 21, 1997, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, a Supplement to the rate schedule to the Agreement for System Power Transactions with Koch Power Services, Inc. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: March 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

38. Ohio Edison Company, Pennsylvania Power Company

[Docket No. OA97–551–000]

Take notice that on February 21, 1997, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, a Supplement to the rate schedule to the Agreement for System Power Transactions with Louis Dreyfus Electric Power, Inc. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: March 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5822 Filed 3–7–97; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER94–931–011, et al.]

PowerNet, et al.; Electric Rate and Corporate Regulation Filings

March 3, 1997.

Take notice that the following filings have been made with the Commission:

1. PowerNet, Valero Power Services Company, Delhi Gas Pipeline Corporation, ProGas Power, SCANA Energy Marketing, Inc., KinEr–G Power Marketing, Inc., NIPSCO Energy Services, Inc.

[Docket Nos. ER94–931–011, ER94–1394–010, ER95–940–007, ER95–968–003, ER96–1086–003, ER96–1139–003, ER96–1431–003 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On February 24, 1997, PowerNet filed certain information as required by the Commission's April 22, 1994, order in Docket No. ER94–931–000.

On February 24, 1997, Valero Power Services Company filed certain information as required by the Commission's August 24, 1994, order in Docket No. ER94–1394–000.

On February 24, 1997, Delhi Gas Pipeline Corporation filed certain information as required by the Commission's June 1, 1995, order in Docket No. ER95–940–000.

On February 18, 1997, ProGas Power filed certain information as required by the Commission's July 7, 1995, order in Docket No. ER95–968–000.

On January 28, 1997, SCANA Energy Marketing, Inc. filed certain information as required by the Commission's May 13, 1996, order in Docket No. ER96–1086–000.

On January 8, 1997, KinEr–G Power Marketing, Inc. filed certain information as required by the Commission's April 30, 1996, order in Docket No. ER96–1139–000.

On January 31, 1997, NIPSCO Energy Services, Inc. filed certain information as required by the Commission's May 29, 1996, order in Docket No. ER96–1431–000.

2. EDC Power Marketing, Inc., Power Clearinghouse, Inc., PacifiCorp Power Marketing, Inc., Proler Power Marketing, Inc., Energy West Power Co., LLC, Ensource, AYP Energy, Inc.

[Docket Nos. ER94–1538–009, ER95–914–007, ER95–1096–008, ER95–1433–005, ER96–392–005, ER96–1919–002, ER96–2673–001, (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On January 30, 1997, EDC Power Marketing, Inc. filed certain information as required by the Commission's September 14, 1994, order in Docket No. ER94–1538–000.

On January 10, 1997, Power Clearinghouse, Inc. filed certain information as required by the Commission's May 11, 1995, order in Docket No. ER95–914–000.

On January 16, 1997, PacifiCorp Power Marketing, Inc. filed certain information as required by the Commission's February 2, 1996, order in Docket No. ER95–1096–000.

On January 30, 1997, Proler Power Marketing, Inc. filed certain information as required by the Commission's October 16, 1995, order in Docket No. ER95–1433–000.

On January 30, 1997, Energy West Power Co., LLC filed certain information as required by the Commission's December 28, 1995, order in Docket No. ER96–392–000.

On January 27, 1997, Ensource filed certain information as required by the Commission's July 10, 1996, order in Docket No. ER96–1919–000.

On January 30, 1997, AYP Energy, Inc. filed certain information as required by the Commission's October 8, 1996, order in Docket No. ER96–2673–000.

3. Northwest Regional Transmission Association

[Docket No. ER95–19–011]

Take notice that on January 30, 1997, Northwest Regional Transmission Association (NRTA) tendered for filing the Member Signature Page of the NRTA executed by Public Utility District No. 1, of Franklin Co. WA, and Public Utility, District No. 1, of Benton County, for membership in NRTA.

Comment date: March 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Northwest Regional Transmission Association

[Docket No. ER95–19–012]

Take notice that on February 12, 1997, Northwest Regional Transmission Association (NRTA) tendered for filing the Member Signature Page of the NRTA executed by Public Utility District No. 1, of Chelan County, Washington, for membership in NRTA.

Comment date: March 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Florida Power Corporation

[Docket No. ER97–356–000]

Take notice that on February 4, 1997, Florida Power Corporation tendered for filing an amendment in the above-referenced docket.

Comment date: March 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Wisconsin Power & Light Company

[Docket No. ER97–985–000]

Take notice that on February 19, 1997, Wisconsin Power & Light Company tendered for filing an amendment in the above-referenced docket.

Comment date: March 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Illinois Power Company

[Docket No. ER97–1687–000]

Take notice that on February 14, 1997, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing non-firm transmission agreements under which Western Resources, Inc. will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of February 7, 1997.

Comment date: March 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Illinois Power Company

[Docket No. ER97–1688–000]

Take notice that on February 14, 1997, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm and non-firm transmission agreements under which Engelhard Power Marketing, Inc. will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Comment date: March 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Northeast Utilities Service Company

[Docket No. ER97–1690–000]

Take notice that on February 14, 1997, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with The United Illuminating Company (UI) under the NU System Companies' System Power Sales/Exchange Tariff No. 6. NUSCO requested deferral of Commission action on the filing until NUSCO made its filing for functional unbundling of services under the Tariff pursuant to the Commission's Order No. 888.

NUSCO states that a copy of this filing has been mailed to UI.

NUSCO requests that the Service Agreement become effective February 1, 1997.

Comment date: March 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Northeast Utilities Service Company

[Docket No. ER97–1691–000]

Take notice that on February 14, 1997, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with Cinergy Corp. (Cinergy) under the NU System Companies' System Power Sales/Exchange Tariff No. 6. NUSCO requested deferral of Commission action on the filing until NUSCO made its filing for functional unbundling of services under the Tariff pursuant to the Commission's Order No. 888.

NUSCO states that a copy of this filing has been mailed to Cinergy.

NUSCO requests that the Service Agreement become effective February 1, 1997.

Comment date: March 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Pennsylvania Power & Light Company

[Docket No. ER97–1692–000]

Take notice that on February 14, 1997, Pennsylvania Power & Light Company (PP&L), filed a Service Agreement dated January 15, 1997, with Duke Louis/Dreyfus L.L.C. (Duke) for non-firm point-to-point transmission service under PP&L's Open Access Transmission Tariff. The Service Agreement adds Duke as an eligible customer under the Tariff.

PP&L requests an effective date of January 15, 1997, for the Service Agreement.

PP&L states that copies of this filing have been supplied to Duke and to the Pennsylvania Public Utility Commission.

Comment date: March 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Western Resources, Inc.

[Docket No. ER97–1694–000]

Take notice that on February 12, 1997, Western Resources, Inc., tendered for filing a non-firm transmission agreement between Western Resources and Electric Clearinghouse, Inc. Western Resources states that the purpose of the agreement is to permit non-discriminatory access to the transmission facilities owned or controlled by Western Resources in accordance with Western Resources' open access transmission tariff on file with the Commission. The agreement is proposed to become effective January 9, 1997.

Copies of the filing were served upon Electric Clearinghouse, Inc. and the Kansas Corporation Commission.

Comment date: March 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Wisconsin Electric Power Company

[Docket No. ER97–1721–000]

Take notice that on February 18, 1997, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing two daily firm transmission service agreements with Rainbow Energy Marketing Corporation (Rainbow).

Wisconsin Electric respectfully requests an effective date of January 10 and January 16, 1997, in order to permit the transmission service undertaken. The Transmission Customer supports the requested effective dates.

Copies of the filing have been served on Rainbow, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: March 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Ohio Power Company

[Docket No. ER97–1722–000]

Take notice that on February 18, 1997, Ohio Power Company (OPCO), submitted for filing with the Commission Modification No. 1 to the agreement between Ohio Power Company (OPCO) and the City of Dover, Ohio (Dover) which provides for the establishment of a new delivery point between OPCO and Dover. Also submitted for filing is an Operating and Maintenance Agreement between OPCO and Dover which contains provisions for OPCO to operate and maintain, per Dover's request, certain of Dover's 138 kV facilities at the new delivery point established in Modification No. 1.

A copy of the filing was served upon the City of Dover, Ohio and the Public Utility Commission of Ohio.

Comment date: March 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Kansas City Power & Light Company

[Docket No. ER97–1723–000]

Take notice that on February 18, 1997, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated January 15, 1997, between KCPL and Illinova Power Marketing, Inc. (IPMI). KCPL proposes an effective date of January 15, 1997, and requests waiver of the Commission's notice requirement. This Agreement provides for the rates and charges for Non-Firm Transmission Service between KCPL and IPMI.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order 888 in Docket No. OA96–4–000.

Comment date: March 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Public Service Electric and Gas Company

[Docket No. ER97–1724–000]

Take notice that on February 18, 1997, Public Service Electric and Gas Company (PSE&G), tendered for filing an agreement to provide non-firm transmission service to itself, pursuant to PSE&G's Open Access Transmission Tariff presently on file with the Commission in Docket No. OA96–80–000.

PSE&G further requests waiver of the Commission's regulations such that the agreement can be made effective as of July 9, 1997.

Comment date: March 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Central Maine Power Company

[Docket No. ER97–1725–000]

Take notice that on February 18, 1997, Central Maine Power Company (CMP), tendered for filing a service agreement for Non-Firm Point-to-Point Transmission Service with Citizens Lehman Power Sales. Service will be provided pursuant to CMP's Open Access Transmission Tariff, designated rate schedule CMP—FERC Electric Tariff, Original Volume No. 3, as supplemented.

Comment date: March 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Maine Electric Power Company

[Docket No. ER97–1726–000]

Take notice that on February 18, 1997, Maine Electric Power Company (MEPCO), tendered for filing a service agreement for Non-Firm Point-to-Point Transmission Service with Citizens Lehman Power Sales. Service will be provided pursuant to CMP's Open Access Transmission Tariff, designated rate schedule CMP—FERC Electric Tariff, Original Volume No. 3, as supplemented.

Comment date: March 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Baltimore Gas & Electric Company

[Docket No. ER97–1727–000]

Take notice that on February 18, 1997, Baltimore Gas & Electric Company (BG&E) tendered for filing a Service Agreement for non-firm point-to-point

transmission service between BG&E and Morgan Stanley Capital Group, Inc.

Comment date: March 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Baltimore Gas & Electric Company

[Docket No. ER97–1728–000]

Take notice that on February 18, 1997, Baltimore Gas & Electric Company (BG&E) tendered for filing a Service Agreement for non-firm point-to-point transmission service between BG&E and Citizens Lehman Power Sales.

Comment date: March 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Baltimore Gas & Electric Company

[Docket No. ER97–1729–000]

Take notice that on February 18, 1997, Baltimore Gas & Electric Company (BG&E) tendered for filing a Service Agreement for non-firm point-to-point transmission service between BG&E and DuPont Power Marketing, Inc.

Comment date: March 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. Baltimore Gas & Electric Company

[Docket No. ER97–1730–000]

Take notice that on February 18, 1997, Baltimore Gas & Electric Company (BG&E) tendered for filing a Service Agreement for non-firm point-to-point transmission service between BG&E and Western Power Services, Inc.

Comment date: March 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Baltimore Gas & Electric Company

[Docket No. ER97–1731–000]

Take notice that on February 18, 1997, Baltimore Gas & Electric Company (BG&E) tendered for filing a Service Agreement for non-firm point-to-point transmission service between BG&E and Virginia Electric and Power Company.

Comment date: March 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. UtiliCorp United Inc.

[Docket No. ER97–1732–000]

Take notice that on February 18, 1997, UtiliCorp United Inc. (UtiliCorp), filed service agreements with AIG Trading Corporation for service under its non-firm point-to-point open access service tariff for its operating divisions, Missouri Public Service, WestPlains Energy-Kansas and WestPlains Energy-Colorado.

Comment date: March 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. Portland General Electric Company

[Docket No. ER97–1733–000]

Take notice that on February 18, 1997, Portland General Electric Company (PGE), tendered for filing under PGE's Final Rule pro forma tariff, (Docket No. OA96–137–000) an executed Service Agreement for Non-firm Point-to-Point Transmission Service and an executed Service Agreement for Short Term Firm Point-to-Point Transmission Service with the Pacific Gas & Electric Company.

Pursuant to 18 CFR 35.11 and the Commission's order issued July 30, 1993 (Docket No. PL93–2–002), PGE respectfully requests the Commission grant a waiver of the notice requirements of 18 CFR 35.3 to allow the Service Agreements to become effective February 1, 1997.

A copy of this filing was caused to be served upon the Pacific Gas & Electric Company as noted in the filing letter.

Comment date: March 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. Northeast Utilities Service

[Docket No. ER97–1734–000]

Company)

Take notice that on February 18, 1997, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with Plum Street Energy Marketing, Inc., under the NU System Companies' Sale for Resale, Tariff No. 7.

NUSCO states that a copy of this filing has been mailed to the Plum Street Energy Marketing, Inc.

NUSCO requests that the Service Agreement become effective February 1, 1997.

Comment date: March 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

27. Northeast Utilities Service Company

[Docket No. ER97–1736–000]

Take notice that on February 18, 1997, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with Niagara Mohawk Power Corporation under the NU System Companies' Sale for Resale, Tariff No. 7.

NUSCO states that a copy of this filing has been mailed to the Niagara Mohawk Power Corporation.

NUSCO requests that the Service Agreement become effective February 1, 1997.

Comment date: March 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

28. Southern Company Services, Inc.

[Docket No. ER97–1737–000]

Take notice that on February 18, 1997, Southern Company Services, Inc. (''SCSI''), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company (collectively referred to as ''Southern Companies'') filed one (1) service agreement under Southern Companies' Market-Based Rate Power Sales Tariff (FERC Electric Tariff, Original Volume No. 4) with the following entity: Electric Clearinghouse, Inc. SCSI states that the service agreement will enable Southern Companies to engage in short-term market-based rate transactions with this entity.

Comment date: March 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

29. Carolina Power & Light Company

[Docket No. ER97–1738–000]

Take notice that on February 18, 1997, Carolina Power & Light Company (CP&L), tendered for filing separate Service Agreements for Non-Firm Point to Point Transmission Service executed between CP&L and the following Eligible Transmission Customers: Southern Energy Trading and Marketing, Inc.; CNG Power Services Corporation; and a Service Agreement for Short-Term Firm Point-to-Point Transmission Service with CNG Power Services Corporation. Service to each Eligible Customer will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: March 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

30. Northeast Utilities Service Company

[Docket No. ER97–1739–000]

Take notice that on February 18, 1997, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with Niagara Mohawk Power Corporation, under the NU System Companies' System Power Sales/ Exchange Tariff No. 6.

NUSCO states that a copy of this filing has been mailed to the Niagara Mohawk Power Corporation.

NUSCO requests that the Service Agreement become effective February 1, 1997.

Comment date: March 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

31. Boston Edison Company

[Docket No. ER97–1743–000]

Take notice that on February 18, 1997, Boston Edison Company (Boston Edison), tendered for filing a Service Agreement and Appendix A under Original Volume No. 6, Power Sales and Exchange Tariff (Tariff) for TransCanada Energy Limited (TransCanada). Boston Edison requests that the Service Agreement become effective as of February 1, 1997.

Edison states that it has served a copy of this filing on TransCanada and the Massachusetts Department of Public Utilities.

Comment date: March 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

32. Cinergy Services, Inc.

[Docket No. ER97–1744–000]

Take notice that on February 18, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Consumers Power Company/The Detroit Edison Company.

Cinergy and Consumers Power Company/The Detroit Edison Company are requesting an effective date of January 20, 1997.

Comment date: March 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

33. Cinergy Services, Inc.

[Docket No. ER97–1745–000]

Take notice that on February 18, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Non-Firm Power Sales Standard Tariff (the Tariff) entered into between Cinergy and Wolverine Power Supply Cooperative, Inc.

Cinergy and Wolverine Power Supply Cooperative, Inc. are requesting an effective date of January 20, 1997.

Comment date: March 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

34. Cinergy Services, Inc.

[Docket No. ER97–1747–000]

Take notice that on February 18, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), a Power Service Agreement, dated January 22, 1997 between Cinergy, CG&E, PSI and Southwestern Electric Cooperative, Inc. (Southwestern).

The Power Service Agreement provides for sale on a market basis.

Cinergy and Southwestern have requested an effective date of one day after this initial filing of the Power Service Agreement.

Copies of the filing were served on Southwestern Electric Cooperative, Inc., Central Illinois Public Service Company, Illinois Power Company, Illinois Commerce Commission, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: March 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

35. Consolidated Edison Company of New York, Inc.

[Docket No. ER97–1757–000]

Take notice that on February 18, 1997, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide non-firm transmission service pursuant to its Open Access Transmission Tariff to American Energy Solutions, Inc. (American Energy).

Con Edison states that a copy of this filing has been served by mail upon American Energy.

Comment date: March 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

36. Consolidated Edison Company of New York, Inc.

[Docket No. ER97–1758–000]

Take notice that on February 18, 1997, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide non-firm transmission service pursuant to its Open Access Transmission Tariff to USGen Power Services, L.P. (USGen).

Con Edison states that a copy of this filing has been served by mail upon USGen.

Comment date: March 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

37. Rig Gas, Inc.

[Docket No. ER97–1759–000]

Take notice that on February 18, 1997, Rig Gas, Inc., tendered for filing a Notice of Termination of Electric Rate Schedule No. 1, with a proposed effective date of February 18, 1997.

Comment date: March 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

38. Interstate Power Company

[Docket No. ER97–1760–000]

Take notice that on February 19, 1997, Interstate Power Company, tendered for filing a Notice of Cancellation of Service Agreement No. 16 under FERC Electric Tariff, Original Volume No. 7.

Comment date: March 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

39. Nelson Industrial Steam Company

[Docket No. QF95–41–000]

On February 25, 1997, Nelson Industrial Steam Company (Applicant) tendered for filing a supplement to its filing in this docket. No determination has been made that the submittal constitutes a complete filing.

The supplement provides additional information pertaining primarily to the ownership and operation of the cogeneration facility.

Comment date: March 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5823 Filed 3–7–97; 8:45 am]

BILLING CODE 6717–01–P

Hydroelectric Applications [Ketchikan Public Utilities, et al.]; Notice of Applications

[Project Nos. 11597–000, et al.]

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11597–000.

c. *Date filed:* January 23, 1997.

d. *Applicant:* Ketchikan Public Utilities.

e. *Name of Project:* Whitman Lake.

f. *Location:* On Whitman Creek, in Ketchikan Gateway Borough Alaska, partially within the Tongass National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r)

h. *Applicant Contact:* John A. Magyar, General Manager, Ketchikan Public Utilities, 2930 Tongass Avenue, Ketchikan, AK 99901, (907) 225–1000.

i. *FERC Contact:* Mr. Hector M. Perez, (202) 219–2843.

j. *Comment Date:* April 28, 1997.

k. *Description of Project:* The proposed project would consist of: (1) The existing 45-foot-high and 220-foot-long concrete arch Whitman Lake Dam ½ mile upstream from the entrance of Whitman Creek into Herring Bay; (2) Whitman Lake with a surface area of 152 acre, a proposed usable storage capacity of 6,500 acre-feet, and normal maximum water surface elevation of 380 feet above mean sea level; (3) an intake structure 80 feet below normal water surface about 1,500 feet west of the dam; (4) an 8-foot-diameter and 1,680-foot-long tunnel; (5) a 60-inch-diameter and 950-foot-long steel and steel-lined tunnel penstock; (6) a powerhouse with an installed capacity of 4,500 kilowatts; (7) a 34.5-kilovolt and 1,500-foot-long transmission line; and other appurtenant facilities.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

2 a. *Type of Application:* Proposal for Angler Access Facility at Port Sheldon.

b. *Project No:* 2680–039.

c. *Date Filed:* January 22, 1997.

d. *Applicant:* Consumers Power Company.

e. *Name of Project*: Ludington Project.

f. *Project location:* Lake Michigan, Mason County, Michigan.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. T.A. McNish, Consumers Power Company, 212 West Michigan Avenue, Jackson, MI 49201, (517) 788–0550.

i. *FERC Contact:* Patti Pakkala, (202) 219–0025.

j. *Comment Date:* April 11, 1997.

k. *Description of Project:* Consumers Power Company, co-licensee for the Ludington Project, has filed a proposal for an angler access facility on Lake Michigan, near the community of Port Sheldon, Michigan. The facility is intended to provide public pedestrian fishing access to an existing pier located on the north shore of the Pigeon Lake Channel. The proposal contains provisions for a 40- to 50-car parking area, restroom facility, and 3,500 feet of accessible fishing boardwalk extending between the parking area and north pier. The pier will be improved to accommodate fishing access and a restroom facility will also be provided at the pier. In addition, the proposal includes provisions for expanding the parking area at an existing State-owned access site on nearby Lakeshore Drive. The proposal has been filed pursuant to the Ludington Pumped Storage Project Settlement Agreement—FERC Offer of Settlement. The Detroit Edison Company is co-licensee for the project.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

3 a. *Type of Application:* Revised, As-Built Exhibit M.

b. *Project No.:* 2309–002.

c. *Date Filed:* August 21, 1996.

d. *Applicant:* Jersey Central Power & Light Co., Public Service Gas & Electric Co.

e. *Name of Project:* Yards Creek Project.

f. *Location:* On Yards Creek, a tributary of Paulins Kill, in Warren County, New Jersey.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Jeffrey Geuther, Yards Creek Generating Station, Walnut Valley Road, Blairstown, NJ 07825, (908) 362–6163.

i. *FERC Contact:* Paul Shannon, (202) 219–2866.

j. *Comment Date:* April 11, 1997.

k. *Description of Filings:* Jersey Central Power & Light Company and Public Service Gas & Electric Company filed a revised as-built exhibit M that shows upgrades recently performed on the project's three generating units. The upgrades increased each unit's installed capacity from 120,000 kW (turbine maximum capacity) to 121,500 kW (turbine best gate capacity). The upgrades also increased each unit's maximum hydraulic capacity from 2,705 cfs to 2,835 cfs while generating and from 2,145 cfs to 2,245 cfs while pumping.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

4 a. *Type of Filing:* Request for Extension of Time to Commence Project Construction.

b. *Applicant:* City of Grafton.

c. *Project No.:* The proposed Tygart Dam Hydroelectric Project, FERC No. 7307–040, is to be located on the Tygart River in Taylor County, West Virginia.

d. *Date Filed:* January 24, 1997.

e. *Pursuant to:* Public Law 104–246.

f. *Applicants Contact:* Mr. Jeffery M. Kossak, City of Grafton, 1370 Avenue of the Americas, Suite 3300, New York, NY 10019, (212) 245–2722.

g. *FERC Contact:* Mr. Lynn R. Miles, (202) 219–2671.

h. *Comment Date:* April 11, 1997.

i. *Description of the Request:* The licensee for the subject project has requested that the deadline for commencement of construction be extended. The deadline to commence project construction for FERC Project No. 7307 would be extended to January 30, 1998. The deadline for completion of construction would be extended to January 30, 2000.

j. This notice also consists of the following standard paragraphs: B, C1, and D2.

5 a. *Type of Application:* Surrender of Exemption.

b. *Project No.:* 7513–002.

c. *Date Filed:* January 27, 1997.

d. *Applicant:* Rockfish Corporation, Inc.

e. *Name of Project:* Old Mill Hydroelectric Project.

f. *Location:* On the North River, in the Town of Bridgewater in Rockingham, Virginia.

g. *Filed Pursuant to:* Federal Power Act, 16 USC §§ 791 (a)–825 (r).

h. *Contact:* John K. Pollock, President, Rockfish Corporation, Inc., P.O. Box 265, Batesville, VA 22924, (703) 828–6821.

i. *FERC Contact:* Mr. Lynn R. Miles, (202) 219–2671.

j. *Comment Date:* April 14, 1997.

k. *Description of the Proposed Action:* The exemptee requests to surrender the exemption for its existing project.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

6 a. *Type of Applications:* Original Major License.

b. *Project Nos.:* (1) 10865–001 and (2) 11495–000.

c. *Dates filed:* (1) September 7, 1993, and (2) August 26, 1994.

d. *Applicants:* (1) Warm Creek Hydro Inc., Bothel, WA; (2) Nooksack River Hydro Inc., Bothel, WA.

e. *Names of Projects:* (1) Warm Creek Hydroelectric; (2) Clearwater Creek Hydroelectric .

f. *Locations:*

(1) On Warm Creek, near Deming, in Whatcom County, WA.

(2) On Clearwater Creek, near Deming, Whatcom County, WA.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)–825(r).

h. *Applicant's Contact:* Mr. Martin W. Thompson, 19515 N. Creek Parkway, Bothell, WA 98011–8208, (206) 487–6541.

i. *FERC Contact:* Mr. Surender M. Yepuri, P.E., (202) 219–2847.

j. *Deadline Date:* See attached paragraph D10.

k. *Status of Environmental Analysis:* These applications have been accepted

for filing and are ready for environmental analysis at this time—see attached standard paragraph D10.

Note: The Commission will be preparing a Multiple Environmental Assessment for these two hydroelectric projects in accordance with the National Environmental Policy Act.

l. *Descriptions of Projects:*

(1) The proposed Warm Creek Project would consist of: (a) a 10-foot-high, 50-foot-long concrete diversion dam impounding a 0.9-acre reservoir at elevation 2,729.9 (msl); (b) a concrete intake structure; (c) a 6,035-foot-long steel penstock; (d) a 42-foot-long, 32-foot-wide, and 18-foot-high concrete powerhouse containing a generator unit with a rated capacity of 3.7 MW; (e) a 19,300-foot-long, 35-kV transmission line; and (f) appurtenant structures.

(2) The proposed Clearwater Creek Project would consist of: (a) a 10-foot-high, 75-foot-long concrete diversion weir with a crest elevation of 1,665 feet (msl); (b) a 40-foot-wide, 80-foot-long, and 18-foot-high concrete intake structure; (c) a 63-inch-diameter, 8,785-foot-long steel penstock; (d) a 48-foot-wide, 48-foot-long, and 35-foot-high concrete powerhouse equipped with a turbine generator unit with a rated capacity of 6.0 MW; (e) a 80-foot-long tailrace; (f) a 35-kV, 11.4-mile-long transmission line; and (g) appurtenant structures.

m. *Purpose of Projects:* Project power would be sold to a local utility.

n. This notice also consists of the following standard paragraphs: A4 and D10.

o. *Available Locations of Applications:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, N.E., Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the applicant's office (see item (h) above).

7 a. *Type of Application:* Surrender of Exemption.

b. *Project No.:* 8825–007.

c. *Date filed:* January 29, 1997.

d. *Applicant:* Neshkoro Power Associates.

e. *Name of Project:* Morley.

f. *Location:* On the Muskegon River, in Mecosta County, Michigan.

g. *File Pursuant to:* Federal Power Act, 16 USC 791(a)–825(r).

h. *Applicant Contact:* Mr. Chuck Alsberg, Neshkoro Power Associates, P.O. Box 167, Neshkoro, Wisconsin 54960, (414) 293–4628.

i. *FERC Contact:* Thomas F. Papsidero, (202) 219–2715.

j. *Comment Date:* April 18, 1997.

k. *Description of Filing:* The exemptee requests to surrender the exemption for the Morley Project.

l. This notice also consists of the following standard paragraphs: B, C2 & D2.

Standard Paragraphs

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

A9. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named

documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

C2. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS,'' ''RECOMMENDATIONS FOR TERMS AND CONDITIONS,'' ''NOTICE OF INTENT TO FILE COMPETING APPLICATION,'' ''COMPETING APPLICATION,'' ''PROTEST,'' or ''MOTION TO INTERVENE,'' as applicable, and the Project Number of the particular application to which the filing refers. Any of these documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of a notice of intent, competing application, or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D10. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice (April 29, 1997 for Project No. 10865–001). All reply comments must be filed with the Commission within 105 days from the date of this notice (June 13, 1997 for Project No. 10865–001). Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Dated: March 4, 1997.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5821 Filed 3–7–97; 8:45 am]

BILLING CODE 6717–01–P

Sunshine Act Meeting

March 5, 1997.

THE FOLLOWING NOTICE OF MEETING IS PUBLISHED PURSUANT TO SECTION 3(A) OF THE GOVERNMENT IN THE SUNSHINE ACT (PUB. L. NO. 94–409), 5 U.S.C. 552B:

AGENCY HOLDING MEETING: FEDERAL ENERGY REGULATORY COMMISSION.

DATES AND TIME: MARCH 12, 1997 10:00 A.M.

PLACE: ROOM 2C, 888 FIRST STREET, N.E., WASHINGTON, D.C. 20426.

STATUS: OPEN.

MATTERS TO BE CONSIDERED: AGENDA. * NOTE—ITEMS LISTED ON THE AGENDA MAY BE DELETED WITHOUT FURTHER NOTICE.

CONTACT PERSON FOR MORE INFORMATION: LOIS D. CASHELL, SECRETARY, TELEPHONE (202) 208–0400. FOR A RECORDING LISTING ITEMS STRICKEN FROM OR ADDED TO THE MEETING, CALL (202) 208–1627

THIS IS A LIST OF MATTERS TO BE CONSIDERED BY THE COMMISSION. IT DOES NOT INCLUDE A LISTING OF ALL PAPERS RELEVANT TO THE ITEMS ON THE AGENDA; HOWEVER, ALL PUBLIC DOCUMENTS MAY BE EXAMINED IN THE REFERENCE AND INFORMATION CENTER.

CONSENT AGENDA—HYDRO 670TH MEETING—MARCH 12, 1997, REGULAR MEETING (10:00 A.M.)

CAH–1.
DOCKET# P–2389, 026, EDWARDS MANUFACTURING COMPANY, INC., AND CITY OF AUGUSTA, MAINE

CAH–2.
DOCKET# P–2538, 003, BEEBEE ISLAND CORPORATION

CAH–3.
DOCKET# P–2569, 012, NIAGARA MOHAWK POWER CORPORATION

CAH–4.
DOCKET# P–2587, 003, NORTHERN STATE POWER COMPANY

CAH–5.
DOCKET# P–6901, 039, CITY OF NEW MARTINSVILLE, WEST VIRGINIA;
DOCKET# P–6901, 040, CITY OF NEW MARTINSVILLE, WEST VIRGINIA

CAH–6.
OMITTED

CONSENT AGENDA—ELECTRIC

CAE–1.
OMITTED

CAE–2.
OMITTED

CAE–3.
DOCKET# ER97–1418, 000, ROCHESTER GAS AND ELECTRIC CORPORATION

CAE–4.
DOCKET# ER96–2703, 000, CITIZENS UTILITIES COMPANY

CAE–5.
OMITTED

CAE–6.
DOCKET# ER96–2572, 000, CHEYENNE LIGHT, FUEL AND POWER COMPANY AND PUBLIC SERVICE COMPANY OF COLORADO, ET AL.

CAE–7.
DOCKET# oa96–11, 000, LONG SAULT, INC.

CAE–8.
OMITTED

CAE–9.
DOCKET# ER96–749, 000, PENNSYLVANIA POWER COMPANY;
OTHER#S EL96–72, 000, PENNSYLVANIA POWER COMPANY

CAE–10.
DOCKET# ER97–137, 000, DESERET GENERATION & TRANSMISSION CO-OPERATIVE

CAE–11.
OMITTED

CAE–12.

DOCKET# ER97–504, 001, PACIFIC NORTHWEST GENERATING COOPERATIVE;
OTHERS#S OA97–32, 001, PACIFIC NORTHWEST GENERATING COOPERATIVE

CAE–13.
OMITTED

CAE–14.
OMITTED

CAE–15.
DOCKET# EL96–52, 000, MUNICIPAL ELECTRIC AUTHORITY OF GEORGIA V. GEORGIA POWER COMPANY

CONSENT AGENDA—GAS AND OIL

CAG–1.
DOCKET# RP97–3, 002, TEXAS EASTERN TRANSMISSION CORPORATION;
OTHER#S RP97–3, 003, TEXAS EASTERN TRANSMISSION CORPORATION

CAG–2.
DOCKET# RP97–4, 002, PANHANDLE EASTERN PIPE LINE COMPANY;
OTHER#S RP97–4, 003, PANDHANDLE EASTERN PIPE LINE COMPANY

CAG–3.
DOCKET# RP97–5, 002, ALGONQUIN GAS TRANSMISSION COMPANY;
OTHER#S RP97–5, 003, ALGONQUIN GAS TRANSMISSION COMPANY

CAG–4.
OMITTED

CAG–5.
DOCKET# RP97–230, 000, FLORIDA GAS TRANSMISSION COMPANY

CAG–6.
OMITTED

CAG–7.
DOCKET# RP96–6, 000, GULF STATES PIPELINE CORPORATION;
OTHER#S RP96–6, 001, GULF STATES PIPELINE CORPORATION

CAG–8.
DOCKET# RP96–10, 000, DOW INTRASTATE GAS COMPANY;
OTHER#S RP96–10, 001, DOW INTRASTATE GAS COMPANY

CAG–9.
DOCKET# RP96–389, 001, COLUMBIA GULF TRANSMISSION COMPANY;
DOTHER#S RP96–390, 001, COLUMBIA GAS TRANSMISSION CORPORATION

CAG–10.
DOCKET# RP97–6, 002, TRUNKLINE GAS COMPANY;
OTHER#S RP97–6, 003, TRUNKLINE GAS COMPANY

CAG–11.
DOCKET# RP97–71, 003, TRANSCONTINENTAL GAS PIPE LINE CORPORATION

CAG–12.
DOCKET# TM96–3–48, 001, ANR PIPELINE COMPANY;
OTHER#S TM96–3–48, 000, ANR PIPELINE COMPANY

CAG–13.
OMITTED

CAG–14.
DOCKET# RP97–102, 001, MISSISSIPPI RIVER TRANSMISSION CORPORATION

CAG–15.
DOCKET# RP97–129, 000, QUESTAR PIPELINE COMPANY

CAG–16.
DOCKET# RP97–131, 000, OVERTHRUST PIPELINE COMPANY

CAG–17.
DOCKET# RP97–142, 000, K N INTERSTATE GAS TRANSMISSION COMPANY

CAG–18.
DOCKET# RP97–168, 000, TUSCARORA GAS TRANSMISSION COMPANY

CAG–19.
DOCKET# RP97–211, 000, K N INTERSTATE GAS TRANSMISSION COMPANY

CAG–20.
DOCKET# RP97–247, 000, NORTHERN NATURAL GAS COMPANY

CAG–21.
DOCKET# RP93–5, 026, NORTHWEST PIPELINE CORPORATION;
OTHER#S RP93–96, 006, NORTHWEST PIPELINE CORPORATION

CAG–22.
OMITTED

CAG–23.
OMITTED

CAG–24.
DOCKET# RP96–211, 008, TRANSCONTINENTAL GAS PIPE LINE CORPORATION;
OTHER#S RP96–211, 007, TRANSCONTINENTAL GAS PIPE LINE CORPORATION

CAG–25.
DOCKET# RP97–88, 001, ALABAMA–TENNESSEE NATURAL GAS COMPANY;
OTHER#S RP97–89, 002, ALABAMA–TENNESSEE NATURAL GAS COMPANY;
RP97–89, 001, ALABAMA–TENNESSEE NATURAL GAS COMPANY

CAG–26.
OMITTED

CAG–27.
DOCKET# RP94–96, 018, CNG TRANSMISSION CORPORATION

CAG–28.
DOCKET# CP92–522, 001, TARPON TRANSMISSION COMPANY

CAG–29.
DOCKET# CP95–218, 001, TEXAS EASTERN TRANSMISSION CORPORATION

CAG–30.
DOCKET# CP96–113, 001, SHELL GAS PIPELINE COMPANY;
OTHER#S CP96–307, 001, SHELL GAS PIPELINE COMPANY

CAG–31.
DOCKET# CP96–189, 000, COLUMBIA GAS TRANSMISSION CORPORATION

CAG–32.
DOCKET# CP96–506, 000, TRAILBLAZER PIPELINE COMPANY

CAG–33.
DOCKET# CP96–576, 000, NORTHWEST PIPELINE CORPORATION;
OTHER#S CP96–576, 001, NORTHWEST PIPELINE CORPORATION

CAG–34.
DOCKET# CP94–628, 004, NORAM GAS TRANSMISSION COMPANY;
OTHER#S– RP95–94, 006, NORAM GAS TRANSMISSION COMPANY

CAG–35.
DOCKET# CP96–557, 000, GREEN CANYON GATHERING COMPANY

CAG–36.
DOCKET# CP97–77, 000, COPANO FIELD SERVICES/COPANO BAY, L.P.;
OTHER#S CP97–52, 000, FLORIDA GAS TRANSMISSION COMPANY

HYDRO AGENDA

HI–1.
RESERVED

ELECTRIC AGENDA

E–1.
DOCKET# EC96–2, 000, PUBLIC SERVICE COMPANY OF COLORADO AND SOUTHWESTERN PUBLIC SERVICE COMPANY;
OTHER#S EC96–2, 001, PUBLIC SERVICE COMPANY OF COLORADO AND SOUTHWESTERN PUBLIC SERVICE COMPANY
ORDER ON MERGER APPLICATION, SETTLEMENT AND REHEARING.

OIL AND GAS AGENDA

I.
PIPELINE RATE MATTERS

PR–1.
RESERVED

II.
PIPELINE CERTIFICATE MATTERS

PC–1.
RESERVED

Lois D. Cashell,

Secretary.

[FR Doc. 97–5988 Filed 3–6–97; 11:27 am]

BILLING CODE 6717–01–M

Sunshine Act Meeting

March 5, 1997.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: March 12, 1997. Following adjournment of the Commission's 10:00 a.m. open meeting.

PLACE: Room 2C, 888 First Street, N.E., Washington, D.C. 20426.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Koch Gateway Pipeline Company.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208–0400.

Lois D. Cashell,

Secretary.

Certification

I hereby certify that, in my opinion, Commission deliberations concerning a preliminary investigation, *Koch Gateway Pipeline Company*, scheduled for February 26, 1997, [and any subsequent meetings on the same matter that qualify under 18 C.F.R. § 375.206(a)] may properly be closed to public observation.

Discussions are likely to involve disclosure of investigative records compiled for law enforcement purposes, or information which if written would be contained in such records, the disclosure of which would interfere with enforcement proceedings. Discussions are also likely to specifically concern the Commission's participation in a civil action or proceeding or the conduct of a particular case involving a determination on the record after opportunity for a hearing.

The relevant exemptions on which this certification is based are set forth in the following provisions of law:

Section 552b(c) of Title 5 of the United States Code, (7)(A), (10)

Section 375.205(a) of Title 18 of the Code of Federal Regulations, (7)(i), (10)(ii)

Dated: February 19, 1997.

David N. Cook,

Deputy General Counsel.

[FR Doc. 97–5989 Filed 3–6–97; 11:27 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[AMS–FRL–5699–8]

Air Pollution Control; Motor Vehicle Emission Factors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public workshop.

SUMMARY: The Environmental Protection Agency is now in the process of developing revision and improvements to the highway vehicle emission factor model (the MOBILE model). The current version of the model, MOBILE5a, was released for use March 26, 1993. The next version of the model, MOBILE6, is tentatively planned for completion early in 1998 and release for use in the summer of 1998. This notice announces the first public workshop for the purpose of discussing issues raised by the pending revisions to the model, and provides the first formal opportunity for comment and reaction to the plans for data collection, analysis, and proposed model revisions. There will be at least one additional MOBILE6 workshop, most probably to be held late this year. The workshop will also include a short presentation concerning EPA's plans for development of a nonroad mobile source emission inventory model.

DATES: The workshop will be held Wednesday, March 19 and Thursday, March 20, 1997. The times are from 8:30 am to 5:00 pm March, and 8:30 am to 3:00 pm March 20. Al times are Eastern Standard Time.

ADDRESSES: The workshop will be held in Powsley Auditorium of the Morris Lawrence Building, Washtenaw Community College, 400 East Huron River Drive, Ann Arbor, MI 48106. Directions to the workshop can be requested from the contact person listed below, or from the EPA Technology Transfer Network (TTN) bulletin board system (BBS), or through accessing the OMS World Wide Web (WWW) site. Information on how to electronically access this and other workshop-related information appears immediately below.

FOR FURTHER INFORMATION CONTACT: Ms. Betty Measley, U.S. EPA Office of Mobile Sources, Assessment and Modeling Division, Emission Inventory Group, 2565 Plymouth Road, Ann Arbor MI 48105. Telephone: (313) 741–7903; fax (313) 741–7939.

SUPPLEMENTARY INFORMATION: This notice, as well as related information concerning the workshop, may be found in the OMS section of the EPA TTN BBS. To access this information using the WWW:

http://www.epa.gov/OMSWWW/models.htm

gopher:

gopher.epa.gov menus→Offices: Air:OMS

ftp: ftp.epa.gov Chg Dir→pub/gopher/OMS

For those directly accessing the TTN BBS by modem connection:

TTNBBS Dial-in: (919) 541–5742 [Voice help: (919) 541–5384]

Web access to TTN: http://ttnwww.rtpnc.epa.gov

telnet: ttnbbs.rtpnc.epa.gov (for reading/leaving messages)

ftp: ttnftp.rtpnc.epa.gov Chg Dir→H-Drive/OMS

Workshop-related files, including a copy of this notice, a map showing the location of WCC, and later additional information as described in the body of this announcement, will be found at the OMS Section, Models & Utilities Subsection

Under Section 130 of the Clean Air Act Amendments of 1990, EPA is required to review, and to revise a necessary, the emission factors used to estimate emissions of volatile organic compounds (VOC), carbon monoxide (CO), and oxides of nitrogen (NO_X) from area and mobile sources. In the case of highway vehicles, emission factors for these pollutants as a function of various parameters are estimated using the highway vehicle emission factor model, commonly referred to as MOBILE. This model, which was first developed in the late 1970s, has been revised, updated, and improved periodically since that time to account for increasing data and analyses concerning in-use emissions performance of highway vehicles, changes in vehicle and emission control technology, changes in fuel composition, strengthening of applicable emission standards, refinements to applicable test procedures, and other items that affect emission levels in use.

Section 130 of the Act requires that this emission factor review, and revision as needed, be performed at least every three years. As noted above, the current official version of the model, MOBILE5a, was released in March 1993. Since that time, one interim update to the model has been developed, MOBILE5a__H, released in November 1995. While not involving revision and update to the entire model, this version and developed to address specific needs on the part of emission factor users. MOBILE5a__H incorporated a number of changes intended to improve the ability of modelers, particularly States and local/regional governments, in estimating the benefits of various innovative inspection and maintenance (I/M) programs and to improve the accuracy of modeling situations in which such programs change over time or different programs are applied to different subsets of the covered fleet.

The time elapsed since the last complete revision to the model and the additional test data and analyses available since that time warrant another thorough update and revision to the model. OMS plans significant changes not only to the underlying emission factor estimates, but to how emissions factors are modeled to account for things such as a separation of start and running exhaust emissions, roadway facility type, average traffic speeds, and a number of other important changes that will affect the input information required to use the model as well as the type of information produced by the model. Thus, this first MOBILE6 workshop will present an overview of the more important model revisions being planned. The tentative agenda for this workshop is discussed below. Other aspects of the modeling of highway vehicle emission that are not specifically included within the following discussion may also be briefly addressed in this workshop; however, the agenda discussed below is intended to illustrate the major areas of discussion for the workshop.

The workshop being announced by today's notice will span two days. In an effort to facilitate travel plans on the part of attendees, a preliminary agenda for the two days is presented below. Note that the first day (March 19) is largely devoted to ''technical'' issues involved in updating and revising the model, while the second part-day

(March 20) is focused more on ''user changes,'' meaning those revisions planned that will affect the input data requirements and file structure and output changes. Many attendees will likely want to be present for both sessions, however, some may find that they can limit their attendance to one or the other days based on their specific interests and needs.

Topics To Be Discussed on March 19

The first day of the workshop is planned to include presentations on the new facility-specific speed correction cycles, start emissions and separation of start from running exhaust emissions, technology fractions for future model years, the findings of the in-use deterioration team, effects of fuel oxygenates and sulfur content on emissions, ''real-time'' diurnal evaporative emissions, and revisions to the modeling of emissions from heavy-duty vehicles. Each presentation will be followed by a short discussion/question and answer period, and there should be some time left at the end of the day for more general open discussion of the material that has been presented.

New Facility-Specific Driving Cycles

One area of concern with respect to the accuracy of modeled emission factors has been the methods used to correct emission estimates based on the Federal Test Procedure (FTP), intended to represent overall urban area driving and with an average speed of 19.6 mph, for other average speeds. EPA is designing a plan for a much different approach to this issue that we hope to include in MOBILE6, which should both improve the accuracy of emission estimates over the range of travel speeds of interest and improve the integration of emission factor modeling with transportation planning and modeling. This would represent a major departure from the approach taken in previous versions of the model, and will result in significant changes to both the input data requirements and output emission factor estimates relative to earlier versions.

Start Emissions and Separation of Start From Running Emissions

MOBILE has used operating mode fractions (describing the portion of overall vehicle miles travelled (VMT) by vehicles in cold-start, hot-start, or stabilized operation) as an input to provide exhaust emission factors in grams per mile that include start emissions. Based on the needs of the air quality and transportation planning communities and the availability of data suitable for this type of analysis, EPA is proposing to make two major changes in this area: Provision of start emissions (in grams per vehicle per start) and stabilized running exhaust emissions (in grams per mile) at the option of the model user, and basing start emission estimates on time that a vehicle has been off (rather than simply ''cold'' and ''hot'' starts, start emissions will be modeled as a function of time that vehicles have been off, or ''soak time'').

Technology Fractions

Emissions from highway vehicles are estimated on a fleetwide basis using information on the fractions of each model years' fleet that use different technologies (e.g., fuel delivery systems, catalytic converter type). Projecting future year emission requires that projections of future technology fractions by model year be included in the MOBILE model. A contractor working for EPA has developed such estimates for future years, which will be presented and discussed.

In-Use Deterioration Team Findings

A team within OMS has spent considerable effort reexamining the extent of and causes of in-use deterioration, or the increase in emissions over time as vehicles accumulate mileage and components, including emission control components, age and degrade in performance. The team has worked in cooperation with the In-Use Deterioration Work Group of the Mobile Source Technical Advisory Subcommittee (a subcommittee to the Clean Air Advisory Committee established under the Federal Advisory Committee Act). All available data on in-use emissions performance over time have been used in an attempt to better quantify the extent of in-use emissions deterioration. An overview of the findings of the team to date, and some of the potential implications for the modeling of in-use deterioration of emissions in MOBILE6, will be presented and discussed at this workshop.

Fuel Sulfur and Oxygenate Content Effects

EPA has known for some time that other aspects of fuel (gasoline) composition, beyond volatility as measured by Reid vapor pressure (RVP), have an impact on emissions. MOBILE5a included the ability for the modeler to specify the effects of RVP, and of oxygenate type (i.e., alcohol or ether blends) and content (% by wgt), on emissions. At this workshop, information on revising and improving the modeling of oxygenate type of content on emissions, and on the impacts of sulfur on emissions, will be presented and discussed.

Onboard Diagnostic System Effects

With the introduction of second generation onboard diagnostic systems (OBD–II) to the light-duty fleet, EPA needs to develop methods of modeling the impact of these systems on reducing in-use deterioration of both exhaust and evaporative emissions, in both inspection/maintenance (I/M) program areas and non-I/M areas. Proposed approaches to including such effects on MOBILE6, based on part on previous work by the California Air Resources Board and recommendations made by the Modeling Work Group of the Mobile Source Technical Advisory Subcommittee, will be presented and discussed.

Heavy-Duty Vehicle Emission Estimates

The estimation of in-use emissions from heavy-duty vehicles is complicated by the fact that such engines are regulated on a mass/work basis (grams per brake horsepower-hour), while users of emission factors generally need emissions on a mass/activity basis (i.e., grams per mile). This necessitates the use of conversion factors to adjust g/bhp-hr emissions to g/mi. These conversion factors will be updated for MOBILE6. In addition, plans are to expand the number of vehicle categories for which specific emission factors are estimated by the model, replacing ''heavy-duty gas vehicle'' and ''heavy-duty diesel vehicle'' emission factors with estimates specific to a number of subcategories (e.g., by GVW class, with buses treated separately), EPA's plans for revisions in these areas will be presented and discussed.

Fleet Characteristics

In order to model emission factors for the entire in-use fleet of highway vehicles, information on the total numbers of vehicles by vehicle type, the registration distributions by age of each vehicle type, and the annual mileage accumulation rates by age of each vehicle type are required. Wile modelers often substitute locality-specific data for the national data that is included in MOBILE, particularly for registration distributions by age, it is still important for national modeling and estimation of the impact of new rules, standards, and test procedures to update these types of information periodically. EPA has retained a contractor to develop more recent information on fleet characteristics, including detailed information on the various subclasses of heavy-duty gas and diesel vehicles, and buses, for use in MOBILE6. A progress

report on results to date and plans for incorporating such data into MOBILE6 will be presented and discussed.

Real-Time Diurnal Emissions

For gasoline-fueled vehicle types, non-exhaust emissions are a significant portion of total emissions of volatile organic compounds (VOC). Non-exhaust, or evaporative, emissions consist of diurnal emissions, hot soak (trip-end) emissions, refueling emissions, and running and resting losses. Diurnal emissions, generated during times that a vehicle is not being driven and ambient temperatures are increasing, have in the past been based on data obtained during one-hour forced heat builds, with the temperature increase representative of an entire eight-hour period being performed over one hour. More recent testing has shown that if the emissions are measured over longer periods of time, more representative of the rate and duration of temperature increases actually experienced by in-use vehicles, the results are not the same. To improve the accuracy of diurnal emissions estimates, and to provide users with the ability to better model emissions over shorter periods of time than full days (e.g., airshed models typically require emissions on an hour-by-hour basis), MOBILE6 will incorporate so-called ''real time'' diurnal emissions estimates and means of estimating such emissions over shorter time periods and lesser temperature increases characteristic of such shorter times. Plans for implementing this approach in MOBILE6 will be presented and discussed.

Liquids Leaks, Trip Characteristics

Plans are for the new version of the model to have means of explicitly accounting for, and estimating emissions due to evaporation of, liquid leaks of fuel. Modeling liquid leaks explicitly in MOBILE would have an impact on estimates for other nontailpipe emission factors (diurnals, hot soaks, running and resting losses), as the presumption is that liquid leaks, if and when encountered, have been included within these other emission source categories. All of these evaporative emission estimates are affected by trip characteristics, or travel patterns, such as average number of trips per day, miles per day, miles per trip, and so forth. EPA plans to have updated these trip characteristics in MOBILE6 on the basis of analysis of data obtained from instrumented vehicles.

These are the main areas in which presentations are planned for the first day of the workshop. Results of test programs and data analyses will be presented where available, and in all subject areas plans for additional work and proposed revisions to the model's treatment of each area will be discussed.

Topics To Be Discussed on March 20

As noted above, the focus of the presentations and discussion on the second day of the workshop will be more toward changes that impact the input data requirements and file structure and on proposed output changes. The second day will also include a presentation concerning EPA's plans for development of a nonroad emission inventory model.

Inspection/Maintenance (I/M) Programs and Credits

One of the more important aspects of the model from the perspective of many States and local/regional entities is the modeling of the benefits of various types of periodic I/M programs. MOBILE5a__H was released in 1995 to provide an interim tool for use in modeling certain types of tests and combinations of programs that could not be modeled adequately using MOBILE5a. The increasing variety of test types (e.g., idle tests, IM240 tests, use of remote sensing devices in conjunction with other I/M programs, the ASM and BAR90 tests), the tendency toward greater use of multiple sets of cutpoints (based, for example, on age of vehicle at time of test), and the frequency with which a given area is using more than one type of I/M program, whether simultaneously or sequentially, all suggest that there is a need for changes in how the emission benefits resulting from such programs are estimated and reflected in MOBILE emission factors. In MOBILE6, EPA is considering significant changes to the means by which credits for I/M programs are modeled. EPA will present proposals for changes in the modeling of I/M programs for discussion and comment.

Input/Output Structure Changes

In past updates to the MOBILE model, EPA has made a strong effort to maintain upward compatibility of input data files used to run the model. That is, a MOBILE4.1 input file, for example, can be used to run MOBILE5a, although some features of MOBILE5a have no corresponding feature in MOBILE4.1. This has been accomplished through adding new options as either (i) additional permitted values assigned to existing control flags, or (ii) additional optional variables appended to the end (right side) of existing input file lines, set up so that if they are missing (as would be the case if an input file for an older MOBILE version not having that feature) this in interpreted as ''new option not to be included in modeling.'' The extent of changes planned and proposed for MOBILE6 are such that it wil not longer be possible to maintain this ''upward compatibility'' of input files. The output files are also likely to change significantly.

Because this is likely to be of great interest of State and local/regional modelers in particular, EPA will devote one presentation to specifically outlining all of the input and output changes implied by the model revisions noted above, as well as others not the subject of specific presentations at this workshop. This information is still in the proposal stage, and the input of and reaction from modelers at and after the workshop will assist in determining the precise nature of these changes in MOBILE6.

Nonroad Model—Overview of Plans

The final presentation at the workshop will not be directly related to MOBILE6, but instead will present an overview of EPA's plans for the development of a nonroad mobile source emission inventory (as versus emission factor) model. Current nonroad inventory development practices are based on EPA's Nonroad Engine and Vehicle Emissions Study (NEVES), done under the 1990 Clean Air Act Amendment requirements, and ''Procedures for Emission Inventory Preparation, Volume IV: Mobile Sources (EPA–450/4–81–026d (revised), 1992). In consideration of the increased recognition of the importance of emissions from nonroad sources in terms of overall emissions and air quality, and the considerable practical difficulty of implmenting the current guidance, EPA is planning to develop a SIP-related nonroad emissions inventory model to meet the needs of the modeling audidence. EPA will present its plans and proposals for development of a nonroad mobile source emission inventory model, and will be especially interested in input from workshop attendees as to their needs and preferences for such a model. Specifically, EPA would lke to know the types of locality-specific input data (e.g., equipment populations) that users of such a model would anticipate developing and using in order to customize nonroad emission inventories for the geographic domain of interest. Such information obtained at the workshop will assist EPA in determining the best approaches to use

in a nonroad emission inventory model to maximize its utility.

Additional Information

To the extent possible, EPA will post material at the TTN BBS site described under **FOR FURTHER INFORMATION CONTACT** above in advance of the workshop. Those planning to attend, and those interested in following the progress of workshop planning more closely, should periodically visit the workshop information site. For example, some of the presentation materials that will be used at the workshop will be posted in advance to facilitate discussion and comment at the workshop.

Dated: February 28, 1997.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 97–5884 Filed 3–7–97; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5700–7]

National Advisory Council for Environmental Policy and Technology Information Impacts Committee; Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act, PL 92463, EPA gives notice of a two-day meeting, of the National Advisory Council for Environmental Policy and Technology (NACEPT) Information Impacts Committee (IIC). NACEPT provides advice and recommendations to the Administrator of EPA on a broad range of environmental policy issues. The IIC has been asked to review information requirements, and provide recommendations on how to effectively position information resources to support new, comprehensive and long-term Agency initiatives. This meeting is being held to commence development of the committee's recommendations to the Agency.

DATES: The two-day public meeting will be held on Tuesday, April 15, 1997 from 9:00 a.m. to 5:00 p.m. and Wednesday, April 16, 1997 from 9:00 a.m. to 3:00 p.m. The meeting will be held at the Channel Inn Hotel 650 Water Street, SW., Washington, DC 20024.

ADDRESSES: Although time will be limited, there will be opportunity for public comment. Interested parties may submit written materials or comments, or may choose to address the committee directly. In either case, requests for participation must be submitted no later than March 31, 1997 to Joe Sierra, Designated Federal Officer, NACEPT/IIC, U.S. EPA, Office of the Cooperative Environmental Management (1601F), 401 M Street, S.W., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Joseph Sierra, Designated Federal Officer for the Information Impacts Committee at 202–260–5839.

Dated: February 25, 1997.

Joseph A. Sierra,

Designated Federal Official.

[FR Doc. 97–5888 Filed 3–7–97; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5700–6]

National Advisory Council for Environmental Policy and Technology Reinvention Criteria Committee; Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act, PL 92463, EPA gives notice of a two-day meeting of the National Advisory Council for Environmental Policy and Technology (NACEPT) Reinvention Criteria Committee (RCC). NACEPT provides advice and recommendations to the Administrator of EPA on a broad range of environmental policy issues. The RCC has been asked to identify criteria the Agency can use to measure the progress and success of specific reinvention projects and its overall reinvention efforts; and to identify criteria to promote opportunities for self-certification, similar to the concept used for pesticide registration. This meeting is being held to provide the EPA with perspectives from representatives of state and local government, academia, industry, environmental organizations, and NGOs.

DATES: The two-day public meeting will be held on Wednesday, April 2, 1997 from 8:30 am to 5:00 pm and on Thursday, April 3, 1997 from 8:30 am to 4:00 pm. The meeting will be held at the Ramada Plaza Hotel Old Town, 901 N. Fairfax Street, Alexandria, Virginia.

ADDRESSES: Materials, or written comments, may be transmitted to the Committee through Gwendolyn Whitt, Designated Federal Officer, NACEPT/RCC, U.S. EPA, Office of Cooperative Environmental Management (1601–F), 401 M Street, SW, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Gwendolyn Whitt, Designated Federal Officer for the NACEPT Reinvention Criteria Committee at 202–260–9484.

Dated: February 25, 1997.

Gwendolyn C.L. Whitt,

Designated Federal Official.

[FR Doc. 97–5890 Filed 3–7–97; 8:45 am]

BILLING CODE 6560–50–P

[FRI–5701–4]

National Drinking Water Advisory Council, Small Systems Working Group; Notice of Open Meeting

Under Section 10(a)(2) of Public Law 92–423, ''The Federal Advisory Committee Act,'' notice is hereby given that a meeting of the Small Systems Working Group of the National Drinking Water Advisory Council established under the Safe Drinking Water Act, as amended (42 U.S.C. S300f *et seq.*), will be held on March 20 and 21, 1997 from 8:30 am to 5:30 pm, at the Channel Inn, 650 Water Street, S.W., Washington, DC 20024. The meeting is open to the public, but due to past experience, seating will be limited.

The purpose of this meeting is to review and discuss options for how EPA might implement the capacity development and state affordability information provisions of the Safe Drinking Water Act Amendments of 1996. The meeting is open to the public to observe. The working group members are meeting to gather information, analyze relevant issues and facts and discuss options. Statements will be taken from the public at this meeting, as time allows.

For more information, please contact, Peter E. Shanaghan, Designated Federal Officer, Small Systems Working Group, U.S. EPA, Office of Ground Water and Drinking Water (4606), 401 M Street SW, Washington, D.C. 20460. The telephone number is 202–260–5813 and the email address is shanaghan.peter@epamail.epa.gov.

Dated: March 3, 1997.

Charlene Shaw,

Designated Federal Officer, National Drinking Water Advisory Council.

[FR Doc. 97–5880 Filed 3–7–97; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5701–5]

National Drinking Water Advisory Council, Source Water Protection Working Group; Notice of Open Meeting

Under Section 10(a)(2) of Public Law 92–423, ''The Federal Advisory

Committee Act,'' notice is hereby given that a meeting of Source Water Protection Working Group of the National Drinking Water Advisory Council established under the Safe Drinking Water Act, as amended (42 U.S. C. S300f *et seq.*), will be held on March 13 and 14, 1997 from 9:00 a.m. to 4:30 p.m. at the Ramada Inn Governor's House, 1615 Rhode Island Ave, NW., Washington, D.C. The meeting is open to the public, but due to past experience, seating will be limited.

The purpose of this meeting is to review and discuss options on the coordinated implementation of the source water assessment and protection provisions of the 1996 Amendments to the Safe Drinking Water Act. The meeting is open to the public to observe. The working group members are meeting to analyze relevant issues and facts. Therefore, no statements will be taken from the public at this meeting.

For more information, please contact, Beth Hall, U.S. EPA, Office of Ground Water and Drinking Water , 4606, 401 M Street SW, Washington, D.C. 20460. The telephone number is Area Code (202) 260–5553. The e-mail address is hall.beth@epamail.epa.gov.

Dated: March 3, 1997.

Charlene Shaw,

Designated Federal Official, National Drinking Water Advisory Council.

[FR Doc. 97–5882 Filed 3–7–97; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5701–2]

Science Advisory Board; Notification of Public Advisory Committee Meetings

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that several committees of the Science Advisory Board (SAB) will meet on the dates and times described below. All times noted are Eastern Daylight Time unless otherwise noted. All meetings are open to the public, however, due to limited space, seating at meetings will be on a first-come basis. For further information concerning specific meetings, please contact the individuals listed below. Documents that are the subject of SAB reviews are normally available from the originating EPA office and are not available from the SAB Office.

1. The Human Exposure and Health Subcommittee (HEHS) of the Science Advisory Board's (SAB) Integrated Risk Project (IRP) will meet on March 26–28, 1997, in room 3075, Building 90, at the Ernest O. Lawrence Berkeley National Laboratory, 1 Cyclotron Road, Berkeley CA 947720. The meeting will begin at 9:00 a.m. and end no later than 5:00 p.m. Pacific Time on each day. This meeting is open to the public, but prior registration is required (see below).

The main purpose of the meeting is to continue discussions of a methodology for assessing and ranking human health risks from exposure to environmental stressors. Subcommittee members will discuss relative risk ranking criteria, stressor-specific data sheets that will serve as the basis for relative risk ranking, and approaches for generating risk rankings from a broad group of environmental health scientists. The Subcommittee's activities are part of the SAB's Integrated Risk Project, begun in an effort to update the 1990 SAB report, Reducing Risk: Setting Priorities and Strategies for Environmental Protection. In a letter dated October 25, 1995, to Dr. Matanoski, Chair of the SAB Executive Committee, Deputy Administrator Fred Hansen charged the SAB to: (a) develop an updated ranking of the relative risk of different environmental problems based upon explicit scientific criteria; (b) provide an assessment of techniques and criteria that could be used to discriminate among emerging environmental risks and identify those that merit serious, near-term Agency attention; (c) assess the potential for risk reduction and propose alternative technical risk reduction strategies for the environmental problems identified; and (d) identify the uncertainties and data quality issues associated with the relative rankings. The Integrated Risk Project is being conducted by several SAB panels, including the HEHS, working at the direction of an ad hoc Steering Committee established by the SAB's Executive Committee.

Single copies of Reducing Risk can be obtained by contacting the SAB's Committee Evaluation and Support Staff (1400), 401 M Street, SW, Washington, DC 20460, telephone (202) 260–8414, or fax (202) 260–1889. Members of the public desiring additional information about the meeting, including an agenda, should contact Ms. Mary Winston, Staff Secretary, Committee Operations Staff, Science Advisory Board (1400), US EPA, 401 M Street, SW, Washington DC 20460, by telephone at (202) 260–6552, fax at (202) 260–7118, or via the INTERNET at: Winston.Mary@EPAMAIL.EPA.GOV.

Anyone wishing to attend the meeting, and/or make an oral presentation to the Committee must register with Mr. Samuel Rondberg, Designated Federal Official for the HEHS, no later than 4:00 p.m., March 19, 1997, at (202) 260–2559 or via the INTERNET at Rondberg.Sam@EPAMAIL.EPA.GOV. Prior registration is required for admission to the Lawrence Berkeley Laboratory complex. The registration request should include name and affiliation of the attendee, and indicate if parking space at the laboratory complex will be required. Anyone wishing to make a presentation to the Subcommittee should also provide an outline in writing to Mr. Rondberg by March 19, 1997 of the issues to be addressed. At least 35 copies of any written comments to the Committee are to be given to Mr. Rondberg no later than the time of the presentation for distribution to the Subcommittee and the interested public. See below for additional information on providing comments to the SAB.

2. The Valuation Subcommittee (VS) of the Science Advisory Board's (SAB) Integrated Risk Project (IRP) will meet April 2–4, 1997, from 8:00 am on April 2 to no later than 5:00 pm (Eastern Daylight Time) on April 4 at the Holiday Inn—Baltimore Inner Harbor, located at 301 W. Lombard Street, Baltimore MD 21201. This meeting is open to the public, however, due to limited space, seating will be on a first-come basis. The purpose of the meeting is to continue Committee efforts in support of the larger IRP effort of the SAB.

In a letter dated October 25, 1995, Deputy Administrator Fred Hansen requested the SAB (see information provided above) to update the assessment of environmental risks, priorities, and risk reduction opportunities contained in the 1990 SAB report, *Reducing Risk: Setting Priorities and Strategies for Environmental Protection* (EPA–SAB–EC–90–021). In subsequent discussions with the Deputy Administrator, the SAB has also agreed to provide insights on economic analysis of risk reduction options and ecosystem valuation. In summary, the current charge to the Valuation Subcommittee is to propose a new framework for assessing the value of ecosystems to humans, including ecological services and environmentally mediated health and quality of life values.

Single copies of the information provided to the Committee can be obtained by contacting Ms. Diana Pozun, Staff Secretary, Committee Operations Staff, Science Advisory Board (1400), US EPA, 401 M Street SW., Washington, DC 20460, telephone (202) 260–6552, fax (202) 260–7118, or via the Internet at: Pozun.Diana@EPAMAIL.EPA.GOV. Single copies of *Reducing Risk*, the report of the previous relative risk ranking effort of

the SAB, can be obtained by contacting the SAB's Committee Evaluation and Support Staff (1400), 401 M Street, SW, Washington, DC 20460, telephone (202) 260–8414, or fax (202) 260–1889.

Anyone wishing to make an oral presentation at the meeting must contact Mr. Thomas Miller, Designated Federal Official for the Valuation Subcommittee, in *writing* no later than 4:00 pm (Eastern Daylight Time) March 21, 1997, at the above address, via fax (202) 260–7118, or via the Internet at: Miller.Tom@EPAMAIL.EPA.GOV. The request should identify the name of the individual who will make the presentation and an outline of the issues to be addressed. At least 35 copies of any written comments to the Committee are to be given to Mr. Miller no later than the time of the presentation for distribution to the Committee and the interested public. To discuss technical aspects of the meeting, please contact Mr. Miller by telephone at (202) 260–5886.

3. The Ecological Risk Subcommittee (ERS) of the Science Advisory Board's Integrated Risk Project will hold a *teleconference* meeting on March 31, 1997 from 11:00 a.m.–1:00 p.m. Eastern Time. The purpose of the meeting is to complete revisions to a proposed Subcommittee methodology for assessing the relative risks from ecological stressors. A limited number of lines will be available for members of the public who wish to call in.

For more information on the teleconference meeting, please contact Ms. Stephanie Sanzone, Designated Federal Official for the Ecological Risk Subcommittee at (202) 260–6557, via fax at (202) 260–7118 or via the Internet at Sanzone.Stephanie@EPAMAIL.EPA.GOV. Anyone wishing to provide oral comments to the Subcommittee must contact Ms. Sanzone no later than 4:00 p.m. on March 26, 1997. The request should identify the name of the individual who will make the presentation and an outline of the issues to be addressed. Oral comments will be limited to five minutes per person.

Providing Oral or Written Comments at SAB Meetings

The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes. For conference call meetings, opportunities for oral comment will be limited to no more than five minutes per speaker and no more than fifteen minutes total. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to a meeting date, may be mailed to the relevant SAB committee or subcommittee prior to its meeting; comments received too close to the meeting date will normally be provided to the committee at its meeting. Written comments may be provided to the relevant committee or subcommittee up until the time of the meeting.

Dated: February 28, 1997.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 97–5883 Filed 3–7–97; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5701–9]

Public Meetings of the Urban Wet Weather Flows Advisory Committee, the Storm Water Phase II Advisory Subcommittee, and the Sanitary Sewer Overflow Advisory Subcommittee

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is given that the Environmental Protection Agency (EPA) has postponed the Sanitary Sewer Overflow (SSO) Advisory Subcommittee meeting scheduled for April 21–22, 1997 at the National Airport Hilton. This meeting was listed in the Federal Register of February 3, 1997.

The public meetings for the Urban Wet Weather Flows (UWWF) Advisory Committee and the Storm Water Phase II Advisory Subcommittee which were also listed in the Federal Register of February 3, 1997 *remain unchanged*.

FOR FURTHER INFORMATION CONTACT: Charles Vanderlyn, Office of Wastewater Management, at (202) 260–7277 or Internet: vanderlyn.charles@epamail.epa.gov.

Dated: March 3, 1997.

Michael B. Cook,

Director, Office of Wastewater Management, Designated Federal Official.

[FR Doc. 97–5881 Filed 3–7–97; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5700–5]

Proposed Settlement Under Section 122(h) of Comprehensive Environmental Response, Compensation and Liability Act

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative settlement and opportunity for public comment.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is proposing to enter into an administrative settlement to resolve claims under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. Notice is being published to inform the public of the proposed settlement and of the opportunity to comment. This settlement is intended to resolve liabilities of one party for costs incurred by EPA at the M & T Delisa Superfund Site.

DATE: Comments must be provided on or before April 9, 1997.

ADDRESS: Comments should be addressed to the U.S. Environmental Protection Agency, Office of Regional Counsel, New Jersey Superfund Branch, 17th Floor, New York, New York 10007–1866 and should refer to: In the Matter of: M & T Delisa Site, U.S. EPA Index No. II–CERCLA–97–0102.

FOR FURTHER INFORMATION CONTACT: U.S. Environmental Protection Agency, Office of Regional Counsel, New Jersey Superfund Branch, Superfund Branch, 17th Floor, New York, New York 10007–1866. Attention: Denise Finn, Esq., (212) 637–3135.

SUPPLEMENTARY INFORMATION: In accordance with Section 122(i)(1) of CERCLA, notice is hereby given of a proposed administrative settlement concerning the M & T Delisa Superfund Site which is located in Ocean Township, Monmouth County, New Jersey. Section 122(h) of CERCLA provides EPA with authority to consider, compromise, and settle certain claims for costs incurred by the United States.

The Equitable Life Assurance Society of the United States is committed to participate in this settlement. The Settling Party will pay a total of $251,324 under this agreement to reimburse EPA for response costs incurred at the M & T Delisa Site.

A copy of the proposed administrative settlement agreement, as well as background information relating to the settlement, may be obtained in person or by mail from EPA's Region II Office of Regional Counsel, New Jersey Superfund Branch, 290 Broadway, 17th Floor, New York, NY 10007–1866.

Dated: February 5, 1997.

William J. Muszynski,

Acting Regional Administrator.

[FR Doc. 97–5889 Filed 3–7–97; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Equal Employment Opportunity Commission.

Federal Register Citation of Previous Announcement, 62 FR 9430, Monday, March 3, 1997.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m. (Eastern Time), Tuesday, March 11, 1997.

CHANGE IN THE MEETING:

Closed Session

The closed session of the meeting has been canceled.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer, on (202) 663–4070.

Dated: March, 5 1997.

This Notice Issued March 5, 1997.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 97–5952 Filed 3–5–97; 4:59 pm]

BILLING CODE 6750–06–M

FARM CREDIT ADMINISTRATION

Sunshine Act Meeting; Farm Credit Administration Board; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), that the March 13, 1997 regular meeting of the Farm Credit Administration Board (Board) will not be held.

FOR FURTHER INFORMATION CONTACT: Floyd Fithian, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 97–5968 Filed 3–6–97; 10:26 am]

BILLING CODE 6705–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:00 a.m. on Tuesday, March 11, 1997, to consider the following matters:

Discussion Agenda

Memorandum and resolution re: Proposed Final Rule on Government Securities Sales Practices, 12 CFR Part 368.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 416–2449 (Voice); (202) 416–2004 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Jerry L. Langley, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: March 6, 1997.

Federal Deposit Insurance Corporation.

Jerry L. Langley,

Executive Secretary.

[FR Doc. 97–6012 Filed 3–6–97; 12:34 pm]

BILLING CODE 6714–01–M

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Use of Large-Value Funds Transfers for Money Laundering; Rescission of Policy Statement

AGENCY: Federal Financial Institutions Examination Council (FFIEC).

ACTION: Rescission of Policy Statement.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC); Office of the Comptroller of the Currency (OCC), Department of the Treasury; Board of Governors of the Federal Reserve System (FRB); Office of Thrift Supervision (OTS), Department of the Treasury; and the National Credit Union Administration (NCUA) (Agencies) each is rescinding its policy statement (Statement) concerning the problem of the use of large-value funds transfers for money laundering. The Statement recommended that banks obtain and maintain certain records with respect to funds transfers sent or received in the normal course of business. The Agencies are rescinding the Statement because it is duplicative of a recent amendment to the Bank Secrecy Act regulations.

DATES: This Statement is rescinded on March 10, 1997.

FOR FURTHER INFORMATION CONTACT:

FDIC: R. Eugene Seitz, Review Examiner, (202) 898–6793, Division of Supervision; Barbara Katron, Counsel, (202) 736–0564, Legal Division, FDIC, 550 17th Street, N.W., Washington, D.C. 20429.

OCC: John McDowell, Senior Advisor, Compliance Management (202) 874–4846, Office of the Chief National Bank Examiner, OCC, 250 E. Street, S.W., Washington, D.C. 20219.

FRB: Richard A. Small, Special Counsel, (202) 452–5235, Division of Banking Supervision, FRB, 20th and C Streets, N.W., Washington, D.C. 20551

OTS: Larry A. Clark, Senior Manager, Compliance Trust Programs, (202) 906–5628, OTS, 1700 G Street, N.W., Washington, D.C. 20552.

NCUA: Kim Iverson, Program Officer, (703) 518–6375, NCUA, 1775 Duke Street, Alexandria, Virginia 22314–3428.

SUPPLEMENTARY INFORMATION: FFIEC consists of representatives from the FDIC, OCC, FRB, OTS, and NCUA. On December 8, 1992, upon the recommendation of the Financial Action Task Force, FFIEC adopted a policy statement concerning the problem of the use of large value funds transfers, and recommended that the five member agencies adopt the Statement. As a means to assist law enforcement agencies in the identification and documentation of parties to funds transfers, the Statement recommended that banks obtain and maintain certain records concerning funds transfers originated or received. The FDIC, OCC, FRB, OTS, and NCUA subsequently adopted the Statement which was published in the Federal Register on March 17, 1993 (58 FR 14400).

On January 3, 1995, the Department of the Treasury and the Board of Governors of the Federal Reserve System jointly published in the Federal Register an amendment to the Bank Secrecy Act (''BSA'') regulations that requires financial institutions to obtain and maintain records concerning funds transfers originated or received by the institutions. The recordkeeping requirements contained in the amendment to the BSA regulations are the same as those recommended in the Statement. The amendment to the BSA regulations became effective May 28, 1996; the Statement has become duplicative and, therefore, unnecessary.

On September 13, 1996, by notational vote, the FFIEC voted to rescind the Statement on behalf of the Agencies.

The Agencies' Action

The Agencies hereby withdraw the Statement.

Dated at Washington, D.C., this 5th day of March, 1997.

Federal Financial Institutions Examination Council

Joe M. Cleaver,

Executive Secretary.

[FR Doc. 97–5848 Filed 3–7–97; 8:45 am]

BILLING CODE 6210–01–P, 6720–01–P, 6714–01–P, 4810–33–P, 7535–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 24, 1997.

A. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480-2171:

1. Larry W. Jochim, Bigfork, Montana; to acquire an additional 9.6 percent, for a total of 11.7 percent, of the voting shares of Mountain Bank System, Inc., Whitefish, Montana, and thereby indirectly acquire Valley Bank of Belgrade, Belgrade, Montana.

Board of Governors of the Federal Reserve System, March 4, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–5763 Filed 3–7–97; 8:45 am]

BILLING CODE 6210-01-F

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 3, 1997.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. ABC Employee Stock Ownership Plan, Anchor, Illinois; to acquire through a redemption of stock, an additional 18.23 percent, for a total of 59.31 percent, of the voting shares of Anchor Bancorporation, Inc., Anchor, Illinois, and thereby indirectly acquire Anchor State Bank, Anchor, Illinois.

Board of Governors of the Federal Reserve System, March 4, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–5762 Filed 3–7–97; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request

The Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and 5 CFR 1320.5. The following are those information collections recently submitted to OMB.

1. HHS Acquisition Regulations —HHSAR Subpart 315 Solicitation and Receipt of Proposals and Quotations—0990–0139—extension with no change—Subpart 315.4 is needed to ensure consistency in all Departmental solicitations and to ensure that all solicitations describe all of the information which an offeror would need to submit an acceptable proposals. *Respondent:* State of local governments, Businesses or other for-profit organizations, non-profit institutions, small businesses; *Total Number of Respondents:* 6,645 *Frequency of Response:* one time; *Average Burden per Response:* 2 hours; *Estimated Annual Burden:* 23,290 hours.

OMB Desk Officer: Allison Eydt.

Copies of the information collection packages listed above can be obtained by calling OS Reports Clearance Officer on (202) 690–6207. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street N.W., Washington, D.C. 20503.

Comments may also be sent to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue S.W., Washington DC, 20201. Written comments should be received within 30 days of this notice.

Dated: February 18, 1997.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 97–5733 Filed 3–7–97; 8:45 am]

BILLING CODE 4150–04–M

Annual Update of the HHS Poverty Guidelines

AGENCY: Department of Health and Human Services.

ACTION: Notice.

SUMMARY: This notice provides an update of the HHS poverty guidelines to account for last (calendar) year's increase in prices as measured by the Consumer Price Index.

EFFECTIVE DATE: These guidelines go into effect on March 10, 1997 (unless an office administering a program using the guidelines specifies a different effective date for that particular program).

ADDRESSES: Office of the Assistant Secretary for Planning and Evaluation, Room 438F, Humphrey Building, Department of Health and Human Services (HHS), Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT: *For information about how the poverty guidelines are used in a particular program,* contact the Federal (or other) office which is responsible for that program.

For general information about the poverty guidelines (but not for information about how they are used in a particular program), contact Gordon Fisher, Office of the Assistant Secretary for Planning and Evaluation, Room 438F, Humphrey Building, Department of Health and Human Services, Washington, D.C. 20201—telephone: (202) 690–6141.

For information about the Hill-Burton Uncompensated Services Program (no-fee or reduced-fee health care services at certain hospitals and other health care facilities for certain persons unable to pay for such care), contact the Office of the Director, Division of Facilities Compliance and Recovery, HRSA, HHS, Room 7–47, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857—telephone: (301) 443–5656 or 1–800–638–0742 (for callers outside Maryland) or 1–800–492–0359 (for callers in Maryland). The Division of Facilities Compliance and Recovery notes that as set by 42 CFR 124.505(b), the effective date of this update of the poverty guidelines for facilities obligated under the Hill-Burton Uncompensated Services Program is sixty days from the date of this publication.

Under an amendment to the Older Americans Act, the figures in this notice are the figures that state and area agencies on aging should use to determine ''greatest economic need'' for Older Americans Act programs. *For information about Older Americans Act programs,* contact Carol Crecy, Administration on Aging, HHS—telephone: (202) 619–0011.

For information about the Department of Labor's Lower Living Standard Income Level (an alternative eligibility criterion with the poverty guidelines for certain Job Training Partnership Act programs), contact Theodore W. Mastroianni, Administrator, Office of Job Training Programs, U.S. Department of Labor—telephone: (202) 219–6236.

For information about the number of persons in poverty or about the Census Bureau (statistical) poverty thresholds, contact the Income, Poverty, and Labor Force Information Staff, HHES Division, Room 416, Iverson Mall, U.S. Bureau of the Census, Washington, D.C. 20233—telephone: (301) 763–8578.

1997 Poverty Guidelines for the 48 Contiguous States and the District of Columbia

Size of family unit	Poverty guideline
1	$7,890
2	10,610
3	13,330
4	16,050
5	18,770
6	21,490
7	24,210
8	26,930

For family units with more than 8 members, add $2,720 for each additional member. (The same increment applies to smaller family sizes also, as can be seen in the figures above.)

1997 Poverty Guidelines for Alaska

Size of family unit	Poverty guideline
1	$9,870
2	13,270
3	16,670
4	20,070
5	23,470
6	26,870
7	30,270
8	33,670

For family units with more than 8 members, add $3,400 for each additional member. (The same increment applies to smaller family sizes also, as can be seen in the figures above.)

1997 Poverty Guidelines for Hawaii

Size of family unit	Poverty guideline
1	$9,070
2	12,200
3	15,330
4	18,460
5	21,590
6	24,720
7	27,850
8	30,980

For family units with more than 8 members, add $3,130 for each additional member. (The same increment applies to smaller family sizes also, as can be seen in the figures above.)

(Separate poverty guideline figures for Alaska and Hawaii reflect Office of Economic Opportunity administrative practice beginning in the 1966–1970 period. Note that the Census Bureau poverty thresholds—the primary version of the poverty measure—have never had separate figures for Alaska and Hawaii. The poverty guidelines are not defined for Puerto Rico, the U.S. Virgin Islands, American Samoa, Guam, the Republic of the Marshall Islands, the Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, and Palau. In cases in which a Federal program using the poverty guidelines serves any of those jurisdictions, the Federal office which administers the program is responsible for deciding whether to use the contiguous-states-and-D.C. guidelines for those jurisdictions or to follow some other procedure.)

The preceding figures are the 1997 update of the poverty guidelines required by section 673(2) of the Omnibus Budget Reconciliation Act (OBRA) of 1981 (Pub.L. 97–35). As required by law, this update reflects last year's change in the Consumer Price Index (CPI–U); it was done using the same procedure used in previous years.

Section 673(2) of OBRA–1981 (42 U.S.C. 9902(2)) requires the use of the poverty guidelines as an eligibility criterion for the Community Services Block Grant program. The poverty guidelines are also used as an eligibility criterion by a number of other Federal programs (both HHS and non-HHS). Due to confusing legislative language dating back to 1972, the poverty guidelines have sometimes been mistakenly referred to as the ''OMB'' (Office of Management and Budget) poverty guidelines or poverty line. In fact, OMB has never issued the guidelines; the guidelines are issued each year by the Department of Health and Human Services (formerly by the Office of Economic Opportunity/Community Services Administration). The poverty guidelines may be formally referenced as ''the poverty guidelines updated annually in the Federal Register by the U.S. Department of Health and Human Services under authority of section 673(2) of the Omnibus Budget Reconciliation Act of 1981.''

The poverty guidelines are a simplified version of the Federal Government's statistical poverty thresholds used by the Bureau of the Census to prepare its statistical estimates of the number of persons and families in poverty. The poverty guidelines issued by the Department of Health and Human Services are used for administrative purposes—for instance,

for determining whether a person or family is financially eligible for assistance or services under a particular Federal program. The poverty thresholds are used primarily for statistical purposes. Since the poverty guidelines in this notice—the 1997 guidelines—reflect price changes through calendar year 1996, they are approximately equal to the poverty thresholds for calendar year 1996 which the Census Bureau will issue in late summer or autumn 1997. (A preliminary version of the 1996 thresholds is now available from the Census Bureau.)

In certain cases, as noted in the relevant authorizing legislation or program regulations, a program uses the poverty guidelines as only one of several eligibility criteria, or uses a percentage multiple of the guidelines (for example, 125 percent or 185 percent of the guidelines). Non-Federal organizations which use the poverty guidelines under their own authority in non-Federally-funded activities also have the option of choosing to use a percentage multiple of the guidelines such as 125 percent or 185 percent.

Some programs, while not using the guidelines to exclude non-lower-income persons as ineligible, use them for the purpose of giving priority to lower-income persons or families in the provision of assistance or services.

In some cases, these poverty guidelines may not become effective for a particular program until a regulation or notice specifically applying to the program in question has been issued.

The poverty guidelines given above should be used for both farm and nonfarm families. Similarly, these guidelines should be used for both aged and non-aged units. The poverty guidelines have never had an aged/non-aged distinction; only the Census Bureau (statistical) poverty thresholds have separate figures for aged and non-aged one-person and two-person units.

Definitions

There is no universal administrative definition of ''income,'' ''family,'' ''family unit,'' or ''household'' that is valid for all programs that use the poverty guidelines. Federal programs may use administrative definitions that differ somewhat from the statistical definitions given below; the Federal office which administers a program has the responsibility for making decisions about administrative definitions. Similarly, non-Federal organizations which use the poverty guidelines in non-Federally-funded activities may use administrative definitions that differ from the statistical definitions given below. In either case, to find out the precise definitions used by a particular program, one must consult the office or organization administering the program in question.

The following statistical definitions (derived for the most part from language used in U.S. Bureau of the Census, Current Population Reports, Series P60–185 and earlier reports in the same series) are made available for illustrative purposes only; in other words, these statistical definitions are not binding for administrative purposes.

(a) *Family.* A family is a group of two or more persons related by birth, marriage, or adoption who live together; all such related persons are considered as members of one family. For instance, if an older married couple, their daughter and her husband and two children, and the older couple's nephew all lived in the same house or apartment, they would all be considered members of a single family.

(b) *Unrelated individual.* An unrelated individual is a person 15 years old or over (other than an inmate of an institution) who is not living with any relatives. An unrelated individual may be the only person living in a house or apartment, or may be living in a house or apartment (or in group quarters such as a rooming house) in which one or more persons also live who are not related to the individual in question by birth, marriage, or adoption. Examples of unrelated individuals residing with others include a lodger, a foster child, a ward, or an employee.

(c) *Household.* As defined by the Bureau of the Census for statistical purposes, a household consists of all the persons who occupy a housing unit (house or apartment), whether they are related to each other or not. If a family and an unrelated individual, or two unrelated individuals, are living in the same housing unit, they would constitute two family units (see next item), but only one household. Some programs, such as the food stamp program and the Low-Income Home Energy Assistance Program, employ administrative variations of the ''household'' concept in determining income eligibility. A number of other programs use administrative variations of the ''family'' concept in determining income eligibility. Depending on the precise program definition used, programs using a ''family'' concept would generally apply the poverty guidelines separately to each family and/or unrelated individual within a household if the household includes more than one family and/or unrelated individual.

(d) *Family unit.* ''Family unit'' is not an official U.S. Bureau of the Census term, although it has been used in the poverty guidelines Federal Register notice since 1978. As used here, either an unrelated individual or a family (as defined above) constitutes a family unit. In other words, a family unit of size one is an unrelated individual, while a family unit of two/three/etc. is the same as a family of two/three/etc.

(e) *Income.* Programs which use the poverty guidelines in determining eligibility may use administrative definitions of ''income'' (or ''countable income'') which differ from the statistical definition given below. Note that for administrative purposes, in many cases, income data for a part of a year may be annualized in order to determine eligibility—for instance, by multiplying by four the amount of income received during the most recent three months.

For statistical purposes—to determine official income and poverty statistics—the Bureau of the Census defines income to include total annual cash receipts before taxes from all sources, with the exceptions noted below. Income includes money wages and salaries before any deductions; net receipts from nonfarm self-employment (receipts from a person's own unincorporated business, professional enterprise, or partnership, after deductions for business expenses); net receipts from farm self-employment (receipts from a farm which one operates as an owner, renter, or sharecropper, after deductions for farm operating expenses); regular payments from social security, railroad retirement, unemployment compensation, strike benefits from union funds, workers' compensation, veterans' payments, public assistance (including Aid to Families with Dependent Children or Temporary Assistance for Needy Families, Supplemental Security Income, and non-Federally-funded General Assistance or General Relief money payments), and training stipends; alimony, child support, and military family allotments or other regular support from an absent family member or someone not living in the household; private pensions, government employee pensions (including military retirement pay), and regular insurance or annuity payments; college or university scholarships, grants, fellowships, and assistantships; and dividends, interest, net rental income, net royalties, periodic receipts from estates or trusts, and net gambling or lottery winnings.

For official statistical purposes, income does not include the following types of money received: capital gains; any assets drawn down as withdrawals

from a bank, the sale of property, a house, or a car; or tax refunds, gifts, loans, lump-sum inheritances, one-time insurance payments, or compensation for injury. Also excluded are noncash benefits, such as the employer-paid or union-paid portion of health insurance or other employee fringe benefits, food or housing received in lieu of wages, the value of food and fuel produced and consumed on farms, the imputed value of rent from owner-occupied nonfarm or farm housing, and such Federal noncash benefit programs as Medicare, Medicaid, food stamps, school lunches, and housing assistance.

Dated: February 28, 1997.

Donna E. Shalala,

Secretary of Health and Human Services.

[FR Doc. 97–5731 Filed 3–7–97; 8:45 am]

BILLING CODE 4110–60–P

Centers for Disease Control and Prevention

[Announcement 729]

National Institute for Occupational Safety and Health; Research and Demonstration Grants Occupational Safety and Health

Introduction

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) is soliciting grant applications for research and demonstration projects related to occupational safety and health (see the section Availability of Funds).

CDC is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Occupational Safety and Health. (For ordering a copy of Healthy People 2000,'' see the section Where To Obtain Additional Information.)

Authority

This program is authorized under the Public Health Service Act, as amended, Section 301 (42 U.S.C. 241); the Occupational Safety and Health Act of 1970, Sections 20(a) and 22 (29 U.S.C. 669 and 671); and the Federal Mine Safety and Health Act of 1977, Section 501 (30 U.S.C. 951). The applicable program regulations are in 42 CFR Part 52.

Eligible Applicants

Eligible applicants include domestic and foreign non-profit and for-profit organizations, universities, colleges, research institutions, and other public and private organizations, including State and local governments and small, minority and/or woman-owned businesses. Exceptions: applicants for the Special Emphasis Research Career Award (SERCA) Grant and Small Grant programs must be citizens or persons lawfully admitted to the United States for permanent residence (resident alien) at the time of application and must be employed by a domestic institution.

Note: An organization described in section 501(c)(4) of the Internal Revenue Code of 1986 which engages in lobbying activities shall not be eligible to receive Federal funds constituting an award, grant, contract, loan, or any other form.

Smoke-Free Workplace

CDC strongly encourages all grant recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds and in which education, library, day care, health care, and early childhood development services are provided to children.

Availability of Funds

For fiscal year (FY) 1997, the budget is projected to be $10,500,000. Of that amount, $7,700,000 is committed to support 41 non-competing continuing awards. Therefore, $2,800,000 is available for new and competing renewal awards. The overall budget includes funds for Small Business Innovation Research (SBIR) grants and for health and safety research related to the construction industry. Target amounts (continuing and new awards) for certain grant mechanisms are as follows: 10 R03 grants (about $375,000), 10 K01 grants (about $540,000), and 5 R29 grants (about $500,000).

Grant applications should be focused on the research priorities described in the section Funding Priorities that includes new research priorities developed in a process which resulted in defining a National Occupational Research Agenda.

Background

In today's society, Americans are working more hours than ever before. The workplace environment profoundly affects health. Each of us, simply by going to work each day, may face hazards that threaten our health and safety. Risking one's life or health should never be considered merely part of the job.

In 1970, Congress passed the Occupational Safety and Health Act to ensure Americans the right to ''safe and healthful working conditions,'' yet workplace hazards continue to inflict a tremendous toll in both human and economic costs.

Employers reported 6.3 million work injuries in 1994 and 515,000 cases of occupational illness. An average of 17 American workers die each day from injuries on the job. Moreover, even the most conservative estimates find that about 137 additional workers die each day from workplace diseases.

Additionally, in 1994 occupational injuries and deaths cost $120.7 billion in wages and lost productivity, administrative expenses, health care and other costs. This does not include the cost of occupational disease.

Occupational injury and disease create needless human suffering, a tremendous burden upon health care resources, and an enormous drain on U.S. productivity. Yet, to date, this mainstream public health problem has escaped mainstream public attention.

The philosophy of NIOSH is articulated in the Institute's vision statement: Delivering on the Nation's Promise: Safety and Health at Work for All People * * * Through Research and Prevention. To identify and reduce hazardous working conditions, the Institute carries out disease, injury, and hazard surveillance and conducts a wide range of field and laboratory research. Additionally, NIOSH sponsors extramural research in priority areas to complement and expand its efforts. These are listed in the section Funding Priorities.

Purpose

The purpose of this grant program is to develop knowledge that can be used in preventing occupational diseases and injuries. Thus, NIOSH will support the following types of applied research projects: causal research to identify and investigate the relationships between hazardous working conditions and associated occupational diseases and injuries; methods research to develop more sensitive means of evaluating hazards at work sites, as well as methods for measuring early markers of adverse health effects and injuries; control research to develop new protective equipment, engineering control technology, and work practices to reduce the risks of occupational hazards; and demonstrations to evaluate the technical feasibility or application of a new or improved occupational safety and health procedure, method, technique, or system.

Mechanisms of Support

Applications responding to this announcement will be reviewed by staff for their responsiveness to the following program requirements. Grants are funded for 12-month budget periods in project periods up to five years for research project grants and demonstration project grants; three years for SERCA grants; and two years for small grants. Continuation awards within the project period are made on the basis of satisfactory progress and on the availability of funds. The types of grants NIOSH supports are as follow:

1. Research Project Grants (R01)

A research project grant application should be designed to establish, discover, develop, elucidate, or confirm information relating to occupational safety and health, including innovative methods, techniques, and approaches for dealing with problems. These studies may generate information that is readily available to solve problems or contribute to a better understanding of the causes of work-related diseases and injuries.

2. Demonstration Project Grants (R18)

A demonstration project grant application should address, either on a pilot or full-scale basis, the technical or economic feasibility of implementing a new/improved innovative procedure, method, technique, or system for preventing occupational safety or health problems. The project should be conducted in an actual workplace where a baseline measure of the problem will be defined, the new/improved approach will be implemented, a follow-up measure of the problem will be documented, and an evaluation of the benefits will be conducted.

3. First Independent Research Support and Transition (FIRST) Grants (R29)

The FIRST grant is to provide a sufficient period of research support for newly independent investigators to initiate their own research and demonstrate the merit of their own research ideas. These grants are intended to underwrite the first independent investigative efforts of an individual; to provide a reasonable opportunity to demonstrate creativity, productivity, and further promise; and to help in the transition to traditional types of research project grants. The award is not intended for individuals in mid-career who may be in transition to another undertaking. It is for a distinct research endeavor and may not be used merely to supplement or broaden an ongoing project.

Candidates must (1) be genuinely independent of a mentor, yet at the same time be at the beginning stages of their research careers, (2) have no more than 5 years of research experience since completing post-doctoral research training or its equivalent, (3) not be in training status at the time of the award, (4) have never been the principal investigator (PI) on any Public Health Service grant except a Small Grant (R03) or a Special Emphasis Research Career Award Grants (K01), and (5) not necessarily be U.S. citizens, although the applicant organizations must be domestic.

The PI must request 5 years of support; otherwise, the application will be reviewed as a traditional research project (R01). There must be a commitment of no less than 50 percent effort to the proposed project. The total direct cost for the 5-year period may not exceed $350,000. The direct cost award in any budget period may not exceed $100,000. FIRST awards are not renewable; however, a PI may submit an R01 application to continue and extend the research supported by a FIRST award. Replacement of the PI on a FIRST award will not be approved.

The application must include the following documentation: (1) A letter or memorandum is needed from a suitable department head or dean which addresses the eligibility of the proposed PI to lead a research project independently at the applicant organization (i.e., Is the proposed PI otherwise qualified to be the PI on a traditional project grant?). When the application is from the institution where the proposed PI received post-doctoral research training, it must be made absolutely clear that the FIRST award would be to support a research endeavor independent of that conducted in the former training environment. Details of the intended commitment of the institution to the project for the 5-year period should be provided. (2) At least three letters of reference must be submitted. FIRST applicants are to request the letters well in advance of the application submission, advising the referees to return the reference letters to the applicant in sealed envelopes as soon as possible. To protect the utility and confidentiality of reference letters, applicants are not to open the envelopes. The sealed envelopes must be attached to the front of the original application. Reference letters should reflect the investigator's research originality and potential for independent investigation. A list of individuals providing letters must be included as Section 10 of the Research Plan. Names, titles, and institutional affiliation is needed for each person.

4. Special Emphasis Research Career Award (SERCA) Grants (K01)

The SERCA grant is intended to provide opportunities for individuals to acquire experience and skills while under the direction of at least one mentor, and in so doing, create a pool of highly qualified investigators who can make future contributions to research in the area of occupational safety and health. SERCA grants are not intended for individuals without research experience, or for productive, independent investigators with a significant number of publications and of senior academic rank. Moreover, the award is not intended to substitute one source of salary support for another for an individual who is already conducting full-time research; nor is it intended to be a mechanism for providing institutional support.

Candidates must: (1) Hold a doctoral degree; (2) have research experience at or above the doctoral level; (3) not be above the rank of associate professor; (4) be employed at a domestic institution; and (5) be citizens or persons lawfully admitted to the United States for permanent residence (resident alien) at the time of application.

This non-renewable award provides support for a three-year period for individuals engaged in full-time research and related activities. Awards will not exceed $50,000 per year in direct costs for salary support (plus fringe benefits), technical assistance, equipment, supplies, consultant costs, domestic travel, publications, and other costs. The indirect cost rate applied is limited to 8 percent of the direct costs, excluding tuition and related fees and equipment expenses, or to the actual indirect cost rate, whichever results in the lesser amount.

A minimum of 60 percent time must be committed to the proposed research project, although full-time is desirable. Other work in the area of occupational safety and health will enhance the candidate's qualifications but is not a substitute for this requirement. Related activities may include research career development activities as well as involvement in patient care to the extent that it will strengthen research skills. Fundamental/basic research will not be supported unless the project will make an original contribution for applied technical knowledge in the identification, evaluation, or control of occupational safety and health hazards (e.g., development of a diagnostic technique for early detection of an occupational disease). Research project

proposals must be of the applicants' own design and of such scope that independent investigative capability will be evident within three years. At the completion of this three-year award, it is intended that awardees should be better able to compete for individual research project grants awarded by NIOSH.

SERCA grant applications should be identified as such on the application form. Section 2 of the application (the Research Plan) should include a statement regarding the applicant's career plans and how the proposed research will contribute to a career in occupational safety and health research. This section should also include a letter of recommendation from the proposed advisor(s).

5. Small Grants (R03)

The small grant program is intended to stimulate proposals from individuals who are considering a research career in occupational safety and health; as such, the minimum time commitment is 10%. It is expected that a recipient would subsequently compete for other grant mechanisms which are described above in items 1 to 4. The award is not intended to supplement ongoing or other proposed research; nor is it intended to be a mechanism for providing institutional support. Please note that fundamental/basic research is generally not supported.

The small grant investigators must be United States citizens or persons lawfully admitted to the United States for permanent residence (resident alien) at the time of application who are predoctoral students, post-doctoral researchers (within 3 years following completion of doctoral degree or completion of residency or public health training), or junior faculty members (no higher than assistant professor). If university policy requires that a more senior person be listed as principal investigator, it should be clear in the application which person is the small grant investigator. Except for applicants who are assistant professors, there must be one or more named mentors to assist with the project. A biographical sketch is required for the small grant investigator, as well as for the supervisor and other key consultants, as appropriate.

This non-renewable award provides support for project periods of up to two years to carry out exploratory or pilot studies, to develop or test new techniques or methods, or to analyze data previously collected. Awards will not exceed $25,000 per year in direct costs for salary support (plus fringe benefits), technical assistance, equipment, supplies, consultant costs, domestic travel, publications, and other costs. The indirect costs will be based upon the negotiated indirect cost rate of the applicant organization. An individual may not receive more than two small grant awards, and then, only if the awards are at different stages of development (e.g., doctoral student, post-doctoral researcher, or junior faculty member).

Funding Priorities

The NIOSH program priorities, listed below, are applicable to all of the above types of grants listed under the section Mechanisms of Support. These priority areas were developed by NIOSH and its partners in the public and private sectors to provide a framework to guide occupational safety and health research in the next decade—not only for NIOSH but also for the entire occupational safety and health community. Approximately 500 organizations and individuals outside NIOSH provided input into the development of the National Occupational Research Agenda (NORA). This attempt to guide and coordinate research nationally is responsive to a broadly perceived need to address systematically those topics that are most pressing and most likely to yield gains to the worker and the nation. Fiscal constraints on occupational safety and health research are increasing, making even more compelling the need for a coordinated and focused research agenda. NIOSH intends to support projects that facilitate progress in understanding and preventing adverse effects among workers. The conditions or examples listed under each category are selected examples, not comprehensive definitions of the category. Investigators may also apply in other areas related to occupational safety and health, but the rationale for the significance of the research to the field of occupational safety and health must be presented in the grant application.

Potential applicants with questions concerning the acceptability of their proposed work are strongly encouraged to contact the ''Technical Information Contact,'' Dr. Roy M. Fleming, listed in this announcement under the section Where To Obtain Additional Information.

The Agenda identifies 21 research priorities. These priorities reflect a remarkable degree of concurrence among a large number of stakeholders. The NORA priority research areas are grouped into three categories: Disease and Injury, Work Environment and Workforce, and Research Tools and Approaches. The NORA document is available through the NIOSH Home Page; http://www.cdc.gov/ niosh/ nora.html.

NORA Priority Research Areas

Disease and Injury
- Allergic and Irritant Dermatitis
- Asthma and Chronic Obstructive Pulmonary Disease
- Fertility and Pregnancy Abnormalities
- Hearing Loss
- Infectious Diseases
- Low Back Disorders
- Musculoskeletal Disorders of the Upper Extremities
- Traumatic Injuries

Work Environment and Workforce
- Emerging Technologies
- Indoor Environment
- Mixed Exposures
- Organization of Work
- Special Populations at Risk

Research Tools and Approaches
- Cancer Research Methods
- Control Technology and Personal Protective Equipment
- Exposure Assessment Methods
- Health Services Research
- Intervention Effectiveness Research
- Risk Assessment Methods
- Social and Economic Consequences of Workplace Illness and Injury
- Surveillance Research Methods

Applications Submission and Deadlines and Review Dates

The research grant application Form PHS–398 (OMB Number 0925–0001) is to be used in applying for these grants. These forms are available at most institutional offices of sponsored research; from the Extramural Outreach and Information Resources Office, Office of Extramural Research, 6701 Rockledge Drive, MS-C7910, Bethesda, MD 20892–7910, telephone (301) 435–0714; fax (301) 480–8443; Internet girg@drgpo.drg.nih.gov; and from the contacts listed under the section Where To Obtain Additional Information.

The original and five copies of the PHS–398 must be submitted to Division of Research Grants, National Institutes of Health, Suite 1040, 6701 Rockledge Drive, MS–C7710, Bethesda, MD 20892–7710, on or before the specified receipt dates provided below. A mailing label is provided in the Form PHS–398 application package.

The timetable for receiving applications and awarding grants is given below. This is a continuous announcement, consequently, these receipt dates will be on-going until further notice.

Receipt date*	Initial review	Secondary review	Earliest possible start date
Research and Demonstration Project Grants:			
Feb. 1	June/July	Sept.	Dec. 1.
June 1	Oct./Nov.	Jan.	Apr. 1.
Oct. 1	Feb./Mar.	May	Aug. 1.
SERCA and Small Grants:			
Mar. 1	June/July	Aug.	Nov. 1.
July 1	Oct./Nov.	Dec.	Mar. 1.
Nov. 1	Feb./Mar.	Apr.	July 1.

*Deadlines for competing continuation applications or revised applications are 1 month later.

Applications must be received by the above receipt dates. To prevent problems caused by carrier delays, retain a legible proof-of-mailing receipt from the carrier, dated no later than one week prior to the receipt date. If the receipt date falls on a weekend, it will be extended to Monday; if the date falls on a holiday, it will be extended to the following work day. The receipt date will be waived only in extenuating circumstances. To request such a waiver, include an explanatory letter with the signed, completed application. No request for a waiver will be considered prior to receipt of the application.

Evaluation Criteria

Applications will be reviewed for scientific and technical merit by the CDC/NIOSH Occupational Safety and Health Chartered Study Section (SOH), in accordance with the standard peer review procedures. Following scientific technical review, the applications will receive a second-level programmatic review. Notification of the review recommendations will be sent to the applicants after the initial review. Awards will be made based on results of the initial and secondary reviews, as well as availability of funds.

Applications that are complete and responsive to the program announcement will be evaluated for scientific merit by the SOH peer review group. As part of the initial merit review, all applications will receive a written critique and undergo a process in which only those applications deemed to have the highest scientific merit, generally the top half of applications under review, will be discussed, assigned a priority score, and receive a second level review by the Institute programmatic review committee.

1. The initial (peer) review is based on scientific merit and significance of the project, competence of the proposed staff in relation to the type of research involved, feasibility of the project, likelihood of its producing meaningful results, appropriateness of the proposed project period, adequacy of the applicant's resources available for the project, and appropriateness of the budget request.

Demonstration grant applications will be reviewed additionally on the basis of the following criteria:

- Degree to which project objectives are clearly established, obtainable, and for which progress toward attainment can and will be measured.
- Availability, adequacy, and competence of personnel, facilities, and other resources needed to carry out the project.
- Degree to which the project can be expected to yield or demonstrate results that will be useful and desirable on a national or regional basis.
- Documentation of cooperation from industry, unions, or other participants in the project, where applicable.

SERCA grant applications will be reviewed additionally on the basis of the following criteria:

- The review process will consider the applicant's scientific achievements, the applicant's research career plan in occupational safety and health, and the degree to which the applicant's institution offers a superior research environment (supportive nature, including letter(s) of reference from advisor(s) which should accompany the application).

Consideration will be given to the fact that the applicants for small grants do not have extensive experience with the grants process.

2. In the secondary review, the following factors will be considered:

- The results of the initial review.
- The significance of the proposed study to the mission of NIOSH.

(1) Relevance to occupational safety and health by contributing to achievement of research objectives specified in Sections 20(a) and 22 of the Occupational Safety and Health Act of 1970 and Section 501 of the Federal Mine Safety and Health Act of 1977,

(2) Magnitude of the problem in terms of numbers of workers affected,

(3) Severity of the disease or injury in the worker population,

(4) Potential contribution to applied technical knowledge in the identification, evaluation, or control of occupational safety and health hazards,

(5) Program balance, and

(6) Policy and budgetary considerations.

Questions regarding the above criteria should be addressed to the Programmatic Technical Information Contact listed under Where To Obtain Additional Information.

Technical Reporting Requirements

Progress reports are required annually as part of the continuation application (75 days prior to the start of the next budget period). The annual progress reports must contain information on accomplishments during the previous budget period and plans for each remaining year of the project. Financial status reports (FSR) are required no later than 90 days after the end of the budget period. The final performance and financial status reports are required 90 days after the end of the project period. The final performance report should include, at a minimum, a statement of original objectives, a summary of research methodology, a summary of positive and negative findings, and a list of publications resulting from the project. Research papers, project reports, or theses are acceptable items to include in the final report. The final report should stand alone rather than citing the original application. Three copies of reprints of publications prepared under the grant should accompany the report.

Executive Order 12372 Review

Applications are not subject to review as governed by Executive Order 12372.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.262.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Other Requirements

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations (45 CFR Part 46) regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and forms provided in the application kit.

Women and Racial and Ethnic Minorities

It is the policy of the Centers for Disease Control and Prevention (CDC) to ensure that women and racial and ethnic groups will be included in CDC/ATSDR-supported research projects involving human subjects, whenever feasible and appropriate. Racial and ethnic groups are those defined in OMB Directive No. 15 and include American Indian, Alaska Native, Asian, Pacific Islander, Black and Hispanic. Applicants shall ensure that women and racial and ethnic minority populations are appropriately represented in applications for research involving human subjects. Where clear and compelling rationale exist that inclusion is inappropriate or not feasible, this situation must be explained as part of the application. In conducting review for scientific merit, review groups will evaluate proposed plans for inclusion of minorities and both sexes as part of the scientific assessment and scoring. This policy does not apply to research studies when the investigator cannot control the race, ethnicity and/or sex of subjects. Further guidance to this policy is contained in the Federal Register, Vol. 60, No. 179, pages 47947–47951, and dated Friday, September 15, 1995.

Where To Obtain Additional Information

To receive additional written information call (404) 332–4561. You will be asked to leave your name, address, and telephone number and will need to refer to announcement 729. You will receive a complete program description, information on application procedures, and application. Business management information may be obtained from Georgia Jang, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., MS-E13, Atlanta, GA 30305, telephone (404) 842–6814; fax: (404) 842–6513; Internet: glj2@cdc.gov.

Programmatic technical assistance may be obtained from Roy M. Fleming, Sc.D., Associate Director for Grants, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Building 1, Room 3053, MS-D30, Atlanta, GA 30333, telephone: (404) 639–3343; fax: (404) 639–4616; Internet: rmf2@cdc.gov.

Please Refer to Announcement Number 729 When Requesting Information and Submitting an Application.

This and other CDC Announcements can be found on the CDC home page at http://www.cdc.gov.

CDC will not send application kits by facsimile or express mail.

Potential applicants may obtain a copy of ''Healthy People 2000'' (Full Report, Stock No. 017–001–00474–0) or ''Healthy People 2000'' (Summary Report, Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC, 20402–9325, telephone (202) 512–1800.

Dated: March 4, 1997.

Diane D. Porter,

Acting Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–5831 Filed 3–7–97; 8:45 am]

BILLING CODE 4163–19–P

[Announcement 725]

National Institute for Occupational Safety and Health; Childhood Agricultural Safety and Health Research, Notice of Availability of Funds for Fiscal Year 1997

Introduction

The Centers for Disease Control and Prevention (CDC) announces that applications are being accepted for research on childhood agricultural safety and health. Projects are sought to conduct research on etiology, outcomes, and intervention strategies, and to rigorously evaluate the effectiveness of commonly used educational materials and methods in preventing childhood agricultural injuries and illnesses. Findings from these projects are intended to advance the scientific base of knowledge needed to maximize the safety and health of children exposed to agricultural production hazards.

CDC is committed to achieving the health promotion and disease prevention objectives of ''Healthy People 2000,'' a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of ''Occupational Safety and Health'' and ''Unintentional Injuries.'' (For ordering a copy of ''Healthy People 2000,'' see the section Where to Obtain Additional Information.)

Authority

This program is authorized under the Public Health Service Act, as amended, Section 301(a) (42 U.S.C. 241(a)) and the Occupational Safety and Health Act of 1970, Section 20(a) (29 U.S.C. 669(a)). The applicable program regulation is 42 CFR Part 52.

Eligible Applicants

Eligible applicants include non-profit and for-profit organizations, universities, colleges, research institutions, and other public and private organizations, including State and local governments, and small, minority and/or woman-owned businesses.

Note: An organization described in Section 501(c)(4) of the Internal Revenue Code of 1986 which engages in lobbying activities shall not be eligible to receive Federal funds constituting an award, grant, contract, loan, or any other form.

Smoke-Free Workplace

CDC strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Availability of Funds

About $2,500,000 is available in fiscal year (FY) 1997 to fund approximately 11 to 15 project grants in four priority research areas: (1) etiology (3–4 awards); (2) outcomes (3–4 awards); (3) intervention strategies (3–4 awards); and (4) rigorous evaluations of commonly available and used childhood educational or training programs to determine effectiveness in influencing safety and health behaviors and consequently preventing agricultural injuries and illnesses among children and adolescents (2–3 awards).

Awards for the first three areas are anticipated to range from $150,000 to $200,000 in total costs (direct and indirect) per year. Awards for the fourth priority area are anticipated to range from $200,000 to $300,000 in total costs (direct and indirect) per year.

The amount of funding available may vary and is subject to change. Awards are expected to begin on or about September 30, 1997. Awards will be made for a 12-month budget period within a project period not to exceed 3 years. Continuation awards within the project period will be made on the basis of satisfactory progress and availability of funds.

Background

Agricultural production, which consistently ranks among the industries with the highest rates of work-related injuries and deaths in the United States, is unique with respect to children and adolescents. Compared to nonagricultural industries, coverage and protections of Federal child labor laws are limited, work by youth under 14 years of age is common, and childhood exposures to work hazards are not confined to working youths. Research is needed to facilitate the appropriate prioritization of efforts to prevent childhood injuries and illnesses associated with agricultural production, and expand the knowledge base for the development and implementation of effective and appropriate intervention strategies.

Federal child labor laws are organized by agricultural and nonagricultural work. Whereas the minimum age for employment in nonagricultural industries is 14 years, there are provisions which allow for agricultural employment of children as young as 10 years of age. Although work declared hazardous by the Secretary of Labor is prohibited for youths less than 18 years of age in nonagricultural industries, in agriculture, it is prohibited for youths less than 16 years of age, and only then for youths formally employed off the family farm. Federal child labor regulations contain a statutory exemption which permits the children of farmers to perform any job at any age on a family farm.

Data on employment of youths less than 15 years of age are not routinely collected or reported. Children less than 15 years of age are known to work, especially in agriculture. In 1995, an estimated 275,000 youths 16–19 years of age were employed in agriculture, accounting for 4% of working youths in this age group. It is reported that 72% of these agricultural youth workers were wage and salary workers, 24% were self-employed, and 5% were unpaid family workers. The Bureau of Labor Statistics (BLS) reports 89 agricultural work-related deaths of youths 16–19 years of age for the years 1992–1995, accounting for a disproportionate 15% of work-related deaths among this age group during this period. Further, BLS reports 66 agricultural work-related deaths of youth less than 16 years of age during this period, a group for which employment data are not available.

An estimated 2,100 injuries serious enough to require time away from work occurred among working youth l4–19 years of age on farms with at least 11 employees in 1994. Estimates of serious injuries on farms with fewer than 11 employees are not available. A couple of studies have suggested that among youth, work-related injuries in agriculture tend to be more serious than injuries in other industries. Farm machinery, stored grain, power lines, manure pits, ponds, and livestock are among injury hazards in agricultural workplaces.

Children and adolescents may be exposed to agricultural production hazards not only through work activities, but by virtue of living on a farm or ranch, accompanying their parents to work, or visiting farms or ranches. In 1991, an estimated 1.3 million youth less than 20 years of age resided on farms or ranches. Another 800,000 children lived in households of hired farm workers. Data from the early 1980s suggested that 300 children and adolescents die annually from farm injuries, with about 35% of the deaths occurring among youth less than 9 years of age. Recent data suggest that about 100,000 children suffer a nonfatal injury associated with agricultural production each year. The monetary and social costs of these injuries are unknown, but they are needed to form and evaluate prevention efforts.

In April 1996, the National Committee for Childhood Agricultural Injury Prevention (NCCAIP) published a National Action Plan towards maximizing the safety and health of all children and adolescents who may be exposed to agricultural hazards. This National Action Plan, which includes 13 objectives and 43 recommended action steps, was based on input from 42 members representing the public and private sector. The National Action Plan calls for funding of research and safety programs by the Federal government, foundations, agribusiness, and other private-sector groups.

Congress allocated FY 1997 funds to NIOSH to facilitate the implementation of this National Action Plan. This announcement and expected awards are one component in the process of NIOSH implementation of the National Action Plan. Research studies which result from this announcement are intended to advance the following objectives in the proposed National Action Plan: establish guidelines for children's and adolescents' work in the industry of agriculture; conduct research on costs, risk factors, and consequences associated with children and adolescents who participate in agricultural work; use systematic evaluation to ensure that educational materials and methods targeted toward childhood agricultural safety and health have demonstrated positive results; influence adult behaviors which affect protection of children and adolescents through the use of incentives and adoption of voluntary safety guidelines; and, provide a protective and supportive environment for children exposed as bystanders to agricultural hazards.

Purpose

NIOSH seeks to maximize the safety and health of children and adolescents exposed to agricultural production hazards by expanding the knowledge base regarding etiology, outcomes, intervention strategies, and the effectiveness of commonly utilized educational materials and methods. Research may address children directly involved in work tasks and/or other children exposed to agricultural production hazards. The funded research projects should cover a variety of types of agricultural production in different geographical regions (e.g. tomato harvesting in California, dairy farms in Wisconsin, and blueberry picking in Maine).

Programmatic Interest

The focus of these grants should facilitate progress in maximizing the safety and health of children and adolescents exposed to agricultural hazards. The rationale for the significance of the research and application to the prioritization, development, or implementation of intervention efforts must be developed in the proposal. Proposals are being accepted which focus on one of three research areas (etiology, outcomes, intervention strategies), or that involve rigorous evaluations of commonly used childhood educational materials or methods. Applications should identify the focus or foci of the research proposal (etiology, outcomes, intervention strategies, evaluation of commonly used childhood educational materials or methods); types and geographical distribution of agricultural production which will be addressed, and size and characteristics of child and adolescent populations which can potentially be impacted by research findings.

1. Etiology Research

Etiologic research into contributors to injury and illness among children in agricultural production settings, with specific attention to risk factors unique to child and adolescent development e.g. physical, cognitive and behavioral. Research which can form the development of age-and developmentally-appropriate guidelines for work and protection of non-working children are of particular interest. Potential research areas follow for illustrative purposes only, and should not be considered boundaries for proposed research questions. Youths who are still maturing may not meet the anthropometric and strength requirements of various agricultural machines, tools, personal protective equipment, and work tasks. Physical maturation and growth may result in unique susceptibilities to physical and chemical work exposures. Cognitive requirements of tasks and safe negotiation of agricultural hazards may exceed cognitive capabilities of children and adolescents. Feelings of invulnerability, lack of perception of risk, and a desire to demonstrate competence and independence may contribute to childhood exposures to agricultural hazards. Fatigue resulting from balancing demands of school and work, the need for intensive work during harvest periods, and inadequate sleep may contribute to injury. Safety awareness and adequate supervision of children and adolescents may protect children from agricultural injury and illness. Both laboratory-and field-based research are appropriate for this priority area of research.

2. Outcomes Research

Research into the consequences, both positive and negative, of children's and adolescents' involvement in agriculture. Outcomes of interest include: physical outcomes related to exposure to health hazards; impact of agricultural injuries on youth's lives and futures; positive and negative psychosocial outcomes for children; and societal and economic costs and consequences associated with childhood agricultural injury. Examples of research efforts which are appropriate under this priority area include, but are not limited to: studies to estimate the societal and economic costs and consequences associated with childhood agricultural injury; assessments of short-and long-term disability from injuries; assessment of short-and long-term psychosocial outcomes related to children's and adolescents' participation in different types of agricultural work; physical assessments of children and adolescents who have been exposed to agricultural hazards such as agricultural chemicals, organic dusts, toxic gases, nitrates, volatile organic compounds, oils and solvents; and, studies of the impact of noise, vibration, cumulative trauma, and other work-induced health hazards on children and adolescents participating in agricultural work.

3. Intervention Strategies Research

Research to form the development and implementation of interventions to protect children and adolescents from agricultural injury. This research may include studies into aids and barriers for implementing a variety of forms of intervention, from control technology to regulations to behavioral change; the development, implementation, and evaluation of new and innovative intervention strategies; and, the relative effectiveness of different intervention strategies. Examples of research efforts which are appropriate under this priority area include, but are not limited to: identification of barriers to implementing prevention measures; identification of innovative methods for removing barriers; identification of effective methods to influence positive safety behaviors of farm and ranch owners and operators, farm workers, parents, caregivers, and manufacturers, children and adolescents; identification of the types and levels of incentives that are most likely to influence protection of children; planning, implementation, and evaluation of structural and machinery design options to provide a protective environment for children at the farm work site; design, implementation and evaluation of community-based programs to enhance the safety and well-being of children who may be exposed as bystanders to agricultural hazards; studies to determine the relative effectiveness of education, engineering, voluntary incentives, and mandatory standards on childhood agricultural injury reduction.

4. Evaluation of Commonly Used Childhood Educational Materials or Methods

Rigorous evaluations of commonly available and used education or training programs to determine effectiveness in influencing safety and health behaviors and consequently preventing agricultural injuries among children and adolescents. Existing childhood education or training programs which require evaluation include, but are not limited to, school curricula, farm safety day camps, and tractor and/or machine operator safety certification programs. Research projects need to include process and outcome evaluations. The process evaluation will document the implementation of the intervention using the educational materials and methods, including identification of key activities, and monitoring delivery of the educational materials and methods to the target population. Outcomes of interest are exposure to injury hazards, knowledge about safety hazards, safety and health behaviors, and the incidence of childhood agricultural injuries. Outcome evaluations should be based on pre-and post-intervention data. The sustainability of intervention effects should be assessed over time, and should not be limited to assessments directly after the delivery of the educational intervention. The research proposals need to demonstrate that the study design and size is sufficient to detect intervention effects, and to evaluate the association of changes in outcome variables with the intervention versus natural change, extraneous events, etc.

The research needs identified in this announcement are consistent with the National Occupational Research Agenda (NORA) developed by NIOSH and partners in the public and private sectors to provide a framework to guide occupational safety and health research in the next decade towards topics which are most pressing and most likely to yield gains to the worker and the nation. The agenda identifies 21 research priorities. Research priorities with specific relevance to this announcement are: traumatic injuries; special populations at risk; control technology and personal protective equipment; intervention effectiveness research; and social and economic consequences of workplace illness and injury. The NORA document is available through the NIOSH Home Page; http:// www.cdc.gov/ niosh/nora.html.

Potential applicants with questions concerning the acceptability of their proposed work are strongly encouraged to contact the technical information contact listed in this announcement in the section Where to Obtain Additional Information.

Reporting Requirements

Progress reports are required annually as part of the continuation application (75 days prior to the start of the next budget period). The annual progress reports must contain information on accomplishments during the previous budget period and plans for each remaining year of the project. Financial status reports (FSR) are required no later than 90 days after the end of the budget period.

The final performance and financial status reports are required 90 days after the end of the project period. The final performance report should include, at a minimum, a statement of original objectives, a summary of research methodology, a summary of positive and negative findings, and a list of publications resulting from the project. Research papers, project reports, or theses are acceptable items to include in the final report. The final report should stand alone rather than citing the original application. Three copies of reprints of publications prepared under the grant should accompany the report.

Evaluation Criteria

Upon receipt, applications will be reviewed by CDC for completeness and responsiveness. Applications determined to be incomplete or unresponsive to this announcement will be returned to the applicant without further consideration. If the proposed project involves organizations or persons other than those affiliated with the applicant organization, letters of support and/or cooperation must be included.

Applications that are complete and responsive to the announcement will be reviewed by an initial review group in which applications will be determined to be competitive or non-competitive, based on the review criteria relative to other applications received. Applications determined to be non-competitive will be withdrawn from further consideration and the principal investigator/program director and the official signing for the applicant organization will be promptly notified. Applications judged to be competitive will be discussed and assigned a priority score.

Review criteria for technical merit are as follows:

1. Technical significance and originality of proposed project.
2. Appropriateness and adequacy of the study design and methodology proposed to carry out the project.
3. Qualifications and research experience of the Principal Investigator and staff, particularly but not exclusively in the area of the proposed project.
4. Availability of resources necessary to perform the project.
5. Documentation of cooperation from collaborators in the project, where applicable.
6. Adequacy of plans to include both sexes and minorities and their subgroups as appropriate for the scientific goals of the project. (Plans for the recruitment and retention of subjects will also be evaluated.)
7. Appropriateness of budget and period of support.
8. Human Subjects—Procedures adequate for the protection of human subjects must be documented. Recommendations on the adequacy of protections include: (1) protections appear adequate and there are no comments to make or concerns to raise, (2) protections appear adequate, but there are comments regarding the protocol, (3) protections appear inadequate and the Initial Review Group has concerns related to human subjects, or (4) disapproval of the application is recommended because the research risks are sufficiently serious and protection against the risks are inadequate as to make the entire application unacceptable.

Secondary review criteria for programmatic importance are as follows:

1. Results of the initial review.
2. Magnitude of the problem in terms of numbers of workers affected.
3. Severity of the disease or injury in the worker population.
4. Usefulness to applied technical knowledge in the evaluation, or control of agricultural safety and health hazards.
5. Degree to which the project can be expected to yield or demonstrate results that will be useful on a national or regional basis.

The following will be considered in making funding decisions:

1. Quality of the proposed project as determined by peer review.
2. Availability of funds.
3. Program balance among priority areas of the announcement.
4. Program balance among types and geographical distribution of agriculture.

Executive Order 12372 Review

Applications are not subject to the review requirements of Executive Order 12372.

Public Health System Reporting Requirement

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.262.

Other Requirements

Human Subjects

The applicant must comply with the Department of Health and Human Services Regulations, 45 CFR Part 46, regarding the protection of human subjects. Assurances must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

Women and Racial and Ethnic Minorities

It is the policy of the CDC to ensure that women and racial and ethnic groups will be included in CDC-supported research projects involving human subjects, whenever feasible and appropriate. Racial and ethnic groups are those defined in OMB Directive No. 15 and include American Indian, Alaskan Native, Asian, Pacific Islander, Black and Hispanic. Applicants shall ensure that women and racial and ethnic minority populations are appropriately represented in applications for research involving human subjects. Where clear and compelling rationale exist that inclusion is not feasible, this situation must be explained as part of the application. In conducting the review of applications for scientific merit, review groups will evaluate proposed plans for inclusion of minorities and both sexes as part of the scientific assessment and assigned score. This policy does not apply to research studies when the investigator cannot control the race, ethnicity and/or sex of subjects. Further guidance to this policy is contained in the Federal Register, Vol. 60, No. 179, Friday, September 15, 1995, pages 47947–47951.

Application Submission and Deadlines

A. Preapplication Letter of Intent

Although not a prerequisite of application, a non-binding letter of intent-to-apply is requested from potential applicants. The letter should be submitted to the Grants Management Officer (whose address is reflected in section B, ''Applications''). It should be postmarked no later than April 10, 1997. The letter should identify the announcement number, name of principal investigator, and specify the priority area to be addressed by the proposed project. The letter of intent does not influence review or funding decisions, but it will enable CDC to plan the review more efficiently, and will ensure that each applicant receives timely and relevant information prior to application submission.

B. Applications

Applicants should use Form PHS–398 (OMB Number 0925–0001) and adhere

to the ERRATA Instruction Sheet for Form PHS–398 contained in the Grant Application Kit. Please submit an original and five copies on or before June 10, 1997 to: Ron Van Duyne, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 321, MS–E13, Atlanta, GA 30305.

C. Deadlines

1. Applications shall be considered as meeting a deadline if they are either:

A. Received at the above address on or before the deadline date, or

B. Sent on or before the deadline date to the above address, and received in time for the review process.

Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be accepted as proof of timely mailings.

2. Applications which do not meet the criteria above are considered late applications and will be returned to the applicant.

Where to Obtain Additional Information

To receive additional written information call (404) 332–4561. You will be asked your name, address, and telephone number and will need to refer to Announcement 725. You will receive a complete program description, information on application procedures, and application forms. In addition, this announcement is also available through the CDC Home Page on the Internet. The address for the CDC Home Page is http://www.cdc.gov.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Georgia L. Jang, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., MS–E13, Atlanta, GA 30305, telephone (404) 842–6814; fax 404–842–6513; internet: glj2@cdc.gov.

Programmatic technical assistance may be obtained from Roy M. Fleming, Sc.D., Associate Director for Grants, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Building 1, Room 3053, MS–D30, Atlanta, GA 30333, telephone 404–639–3343; fax 404–639–4616; internet: rmf2@cdc.gov.

Please refer to announcement number 725 when requesting information and submitting an application.

Potential applicants may obtain a copy of ''Healthy People 2000'' (Full Report, Stock No. 017–001–00474–0) or ''Healthy People 2000'' (Summary Report, Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

Useful References

The following documents may also provide useful information:

National Committee for Childhood Agricultural Injury Prevention. Children and Agriculture: Opportunities for Safety and Health. Marshfield, WI: Marshfield Clinic, 1996.

National Institute for Occupational Safety and Health. National Occupational Research Agenda. Cincinnati, OH: U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health, DHHS (NIOSH) Publication No. 96–115.

Dated: March 4, 1997.

Diane D. Porter,

Acting Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–5789 Filed 3–7–97; 8:45 am]

BILLING CODE 4163–18–P

Translation Advisory Committee for Diabetes Prevention and Control Programs: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Translation Advisory Committee for Diabetes Prevention and Control Programs.

Times and Dates: 1 p.m.–5 p.m., March 26, 1997. 8 a.m.–5 p.m., March 27, 1997.

Place: San Diego Marriott Mission Valley, 8757 Rio San Diego Drive, San Diego, California 92108, telephone 619/692–3800.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Purpose: This committee is charged with advising the Director, CDC, regarding policy issues and broad strategies for diabetes translation activities and control programs designed to reduce risk factors, health services utilization, costs, morbidity, and mortality associated with diabetes and its complications. The Committee identifies research advances and technologies ready for translation into widespread community practice; recommends broad public health strategies to be implemented through public health interventions; identifies opportunities for surveillance and epidemiologic assessment of diabetes and related complications; and for the purpose of assuring the most effective use and organization of resources, maintains liaison and coordination of programs within the Federal, voluntary, and private sectors involved in the provision of services to people with diabetes.

Matters to be Discussed: Agenda items include a discussion on the public health issues surrounding screening for undiagnosed diabetes mellitus, issues in chronic disease screening, salient issues for program development, and goals and future areas of emphasis for the Division of Diabetes Translation.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Jay Allen, Program Analyst, Division of Diabetes Translation, National Center for Chronic Disease Prevention and Health Promotion, CDC, 4770 Buford Highway, NE, M/S K–10, Atlanta, Georgia 30341–3724, telephone 770/488–5004.

Dated: March 3, 1997.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–5827 Filed 3–7–97; 8:45 am]

BILLING CODE 4163–18–P

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Runaway and Homeless Youth Management Information System.

OMB No.: 0970–0123.

Description: In the Runaway and Homeless Youth Act (42 U.S.C. 5701 *et seq.*) Congress mandated that the Department of Health and Human Services (HHS) report regularly on the status of HHS-funded programs serving runaway and homeless youth. In the Anti-Drug Abuse Act of 1988 (42 U.S.C. 11801 *et seq.*) Congress mandated that HHS report regularly on the status of HHS-funded Drug Abuse and Prevention Programs (DAPP) serving runaway and homeless youth. Organizations funded under the Runaway and Homeless Youth Program and/or Drug Abuse and Prevention Program are required by statute (42 U.S.C. 5712, 42 U.S.C. 5714–2 and/or 42 U.S.C. 11824) to meet several data collection and reporting requirements, including maintaining client statistical records and submitting annual program reports with regard to the profile of youth and families served and the

services provided to them. The RHY MIS data support these organizations as they carry out a variety of integrated, ongoing responsibilities and projects, including legislative reporting requirements, planning and public policy development for runaway and homeless youth programs, accountability monitoring, program management, research, and evaluation.

Respondents: Runaway and Homeless Youth Grantees and Drug Abuse and Prevention Program Grantees.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Youth Program Status	400	4	2.2	3,466.67
Youth Profile	400	4	29.1	46,501.00
Agency Profile	400	1	0.17	66.67
Program Profile	400	1	1.0	400
Staff Profile	400	1	1.2	466.67
Coordinating Agency	400	1	0.3	133.33
Community Education	400	1	0.4	166.67
Promotional/Instructional Materials	400	1	0.2	66.67
Estimated Total Annual Burden Hours				51,267.67

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Ms. Wendy Taylor.

Dated: March 4, 1997.

Bob Sargis,

IRM Staff.

[FR Doc. 97–5730 Filed 3–7–97; 8:45 am]

BILLING CODE 4184–01–M

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Agenda/Purpose: To review and evaluate grant applications and/or contract proposals.

Name of Committee: National Human Genome Research Institute Review Group, Ethical, Legal, and Social Implications Subcommittee.

Date: March 27, 1997.

Time: 10:00 a.m.

Place: National Human Genome Research Institute, National Institutes of Health, Building 38A, Room 609, Bethesda, MD 20892 (Teleconference).

Contact Person: Rudy Pozzatti, Ph.D., Office of Scientific Review, National Center for Human Genome Research, National Institutes of Health, Building 38A, Room 604, Bethesda, Maryland 20892, (301) 402–0838.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. The applications and/or contract proposals, and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalogue of Federal Domestic Assistance Program No. 93.172, Human Genome Research.)

Dated: March 4, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–5771 Filed 3–7–97; 8:45 am]

BILLING CODE 4140–01–M

National Human Genome Research Institute; Notice of Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Agenda/Purpose: To consider the biological questions that can be addressed by analysis of human DNA sequence polymorphism and the technology required for such studies.

Name of Committee: National Human Genome Research Institute, Special Emphasis Panel (M1).

Date: March 31–April 1, 1997.

Time: 8:30 am.

Place: NIH, Natcher (Building 45), Room C1, 9000 Rockville Pike, Bethesda, Maryland.

Contact Person: Mark Guyer, Ph.D., National Human Genome Research Institute, National Institutes of Health, Building 38A, Room 604, Bethesda, Maryland 20892, (301) 402–5407.

(Catalogue of Federal Domestic Assistance Program No. 93.172, Human Genome Research.)

Dated: March 4, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–5773 Filed 3–7–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Environmental Health Sciences Special Emphasis Panel (SEP) meeting:

Name of SEP: Community-Based Prevention/Intervention Research in Environmental Health Sciences.

Date: March 31–April 2, 1997.

Time: 8:00 P.M.

Place: National Institute of Environmental Health Sciences, South Campus, Bldg. 101, Conference Center 101–B, Research Triangle Park, NC 27709.

Contact Person: Dr. Carol Shreffler, National Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–1445.

Purpose/Agenda: To review and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Grant applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.113, Biological Response to Environmental Agents; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation; 93.894, Resource and Manpower Development, National Institutes of Health.)

Dated: March 4, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–5770 Filed 3–7–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 United States Code Appendix 2), notice is hereby given of the following meeting:

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel.

Date: March 19, 1997.

Time: 2 pm to adjournment.

Place: 6120 Executive Blvd., Rockville MD 20892 (telephone conference call).

Contact Person: Melissa Stick, Ph.D., M.P.H., Scientific Review Administrator, NIDCD/DEA/SRB, EPS Room 400C, 6120 Executive Boulevard, Bethesda MD 20892–7180, 301–496–8693.

Purpose/Agenda: To review and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, United States Code. The applications and/or proposals and the discussion could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Communication Disorders.)

Dated: March 4, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–5772 Filed 3–7–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Child Health and Human Development Special Emphasis Panel (SEP) meeting:

Name of SEP: Hyperglycemia and Adverse Pregnancy Outcome (Teleconference).

Date: March 24, 1997.

Time: 1:30 p.m. (est)—Adjournment.

Place: 6100 Executive Boulevard, 6100 Building—Room 5E01D, Rockville, Maryland 20852.

Contact Person: Edgar E. Hanna, Ph.D., Scientific Review Administrator, NICHD, 6100 Executive Boulevard, 6100 Building, Room 5E01D, Rockville, Maryland 20852, Telephone: 301–496–1485.

Purpose/Agenda To evaluate and review grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. The discussions of these applications could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. [93.864, Population Research and No. 93.865, Research for Mothers and Children, National Institutes of Health)

Dated: March 4, 1997.

LaVerne Y. Stringfield,

Committee Management officer, NIH.

[FR Doc. 97–5774 Filed 3–7–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: March 14, 1997.

Time: 3 p.m.

Place: Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Maureen L. Eister, Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–3936.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: March 19, 1997.

Time: 3 p.m.

Place: Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Shirley H. Maltz, Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–3936.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: March 24, 1997.

Time: 3 p.m.

Place: Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: W. Gregory Zimmerman, Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–4868.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: March 4, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–5775 Filed 3–7–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Environmental Health Sciences Special Emphasis Panel (SEP) meeting:

Name of SEP: Conference Grant on Bioavailability and Cleanup.

Date: March 17, 1997.

Time: 1:00 p.m.

Place: National Institute of Environmental Health Sciences, Bldg. 1, Rm. 103, Research Triangle Park, NC 27709.

Contact Person: Mr. David P. Brown, National Institute of Environmental Health Sciences, PO Box 12233, Research Triangle Park, NC 27709, (919) 541–4964.

Purpose/Agenda: To review and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in secs.

552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Grant applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Programs Nos. 93.113, Biological Response to Environmental Agents; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation; 93.894, Resource and Manpower Development, National Institutes of Health)

Dated: March 3, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–5776 Filed 3–7–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel meetings:

Name of SEP: Cystic Fibrosis.

Date: March 21, 1997.

Time: 8:30 a.m.—Adjournment.

Place: Sheraton International Airport Hotel at BWI Airport, 7032 Elm Road, Baltimore, Maryland 21240.

Contact Person: William E. Elzinga, Ph.D., Scientific Review Administrator, Natcher Building, Room 6as–37A, National Institutes of Health, Bethesda, Maryland 20892–6600, Phone: 301–594–8895.

Purpose/Agenda: To review and evaluate a contract proposal.

This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Name of SEP: Diabetes Prevention in Yupik Eskimos.

Date: March 27, 1997.

Time: 3:00 p.m. EST.

Place: Room 6as–25E, Natcher Building, NIH, (Telephone Conference Call).

Contact Person: Sharee Pepper, Ph.D., Scientific Review Administrator, Natcher Building, Room 6as–25E, National Institutes of Health, Bethesda, Maryland 20892–6600, Phone: (301) 594–7798.

Purpose/Agenda: To review and evaluate grant applications.

Name of SEP: Prevention of Diabetes in African Americans and Minorities Conference.

Date: April 1, 1997.

Time: 4:15 p.m. EST.

Place: Room 6as–25E, Natcher Building, NIH, (Telephone Conference Call).

Contact Person: Sharee Pepper, Ph.D., Scientific Review Administrator, Natcher Building, Room 6as–25E, National Institutes of Health, Bethesda, Maryland 20892–6600, Phone (301) 594–7798.

Purpose/Agenda: To review and evaluate grant applications.

These meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health.)

Dated: March 4, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–5778 Filed 3–7–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meeting of the Board of Scientific Counselors

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), April 16–18, 1997, National Institutes of Health, Building 5, Room 127, Bethesda, Maryland 20892.

In accordance with the provisions set forth in secs. 552b(c)(6), Title 5 U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on April 16 from 7:00 p.m. to adjournment on April 18 for the review, discussion and evaluation of individual intramural programs and projects conducted by the NIDDK, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

A summary of the meeting and roster of members will be provided, upon request by the Committee Management Office, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, Natcher Building, Room 6AS–37J, Bethesda, Maryland 20892, (301) 594–8892. For any further information, please contact Dr. Allen Spiegel, Scientific Review Administrator, Board of Scientific Counselors, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, Building 10, Room 9N–222, Bethesda, Maryland 20892, (301) 496–4128, at least two weeks prior to the meeting date.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health.)

Dated: March 4, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–5779 Filed 3–7–97; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Behavioral and Neurosciences.

Date: March 18, 1997.

Time: 9:00 a.m.

Place: Ramada Inn, Rockville, MD.

Contact Person: Dr. Herman Teitelbaum, Scientific Review Administrator, 6701 Rockledge Drive, Room 5190, Bethesda, Maryland 20892, (301) 435–1254.

This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Name of SEP: Clinical Sciences.

Date: March 25, 1997.

Time: 8:30 a.m.

Place: NIH, Rockledge 2, Room 5216, Telephone Conference.

Contact Person: Dr. Nancy Shinowara, Scientific Review Administrator, 6701 Rockledge Drive, Room 5216, Bethesda, Maryland 20892, (301) 435–1173.

Name of SEP: Biological and Physiological Sciences.

Date: March 27, 1997.

Time: 8:30 a.m.

Place: Grand Hyatt Hotel, Washington, DC.

Contact Person: Ms. Carol Campbell, Scientific Review Administrator, 6701 Rockledge Drive, Room 5196, Bethesda, Maryland 20892, (301) 435–1257.

Name of SEP: Clinical Sciences.

Date: April 9, 1997.

Time: 1:00 p.m.

Place: NIH, Rockledge 2, Room 4104, Telephone Conference.

Contact Person: Dr. Priscilla Chen, Scientific Review Administrator, 6701 Rockledge Drive, Room 4104, Bethesda, Maryland 20892, (301) 435–1787.

Name of SEP: Clinical Sciences.
Date: April 14, 1997.
Time: 3:00 p.m.
Place: NIH, Rockledge 2, Room 4104, Telephone Conference.
Contact Person: Dr. Priscilla Chen, Scientific Review Administrator, 6701 Rockledge Drive, Room 4104, Bethesda, Maryland 20892, (301) 435–1787.
Name of SEP: Clinical Sciences.
Date: April 22, 1997.
Time: 3:00 p.m.
Place: NIH, Rockledge 2 Room 4104, Telephone Conference.
Contact Person: Dr. Priscilla Chen, Scientific Review Administrator, 6701 Rockledge Drive, Room 4104, Bethesda, Maryland 20892, (301) 435–1787.

Purpose/Agenda: To review Small Business Innovation Research.
Name of SEP: Behavioral and Neurosciences.
Date: April 3–4, 1997.
Time: 1:00 p.m.
Place: Holiday Inn—Capitol, Washington, DC.
Contact Person: Dr. Jane Hu, Scientific Review Administrator, 6701 Rockledge Drive, Room 5168, Bethesda, Maryland 20892, (301) 435–1245.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93,893, National Institutes of Health, HHS)

Dated: March 3, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–5777 Filed 3–7–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*).

Applicant: Houston Zoological Gardens, Houston, TX, PRT–825689.

The applicant request a permit to import one male captive born Pink pigeon (*Columba mayeri*) from Jersey Wildlife Preservation Trust for the purpose of enhancement of the species through propagation.

Applicant: Lance K. Parks, Billings, MT, PRT–825893.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Duke University Primate Center, Durham, NC, PRT–825870.

The applicant requests a permit to export the frozen cadaver of one captive-born female mongoose lemur (Eulemur coronatus), which died of natural causes, to the Institute for Experimental Pathology, Muenster, Germany, for the purpose of enhancement of the species through genetic research.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: March 4, 1997.

Caroline Anderson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 97–5819 Filed 3–7–97; 8:45 am]

BILLING CODE 4310–55–P

Revised Procedures for Selecting and Funding Federal Aid in Sport Fish and Wildlife Restoration Administrative Projects

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The Service is announcing procedures for obtaining funding for Federal Aid administrative projects and availability of an estimated $2,000,000 for Wildlife Restoration projects and $2,000,000 for Sport Fish projects. This year's program changes the application deadline, updates focus areas, and clarifies documentation needs from the previous year.

DATES: Applications/proposals must be received by May 1, 1997.

ADDRESSES: Proposals must be submitted to: U.S. Fish and Wildlife Service, Chief, Division of Federal Aid, MS 140 ARLSQ, 4401 North Fairfax Drive, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Mr. Robert E. Lange, Jr., Chief, Division of Federal Aid, U.S. Fish and Wildlife Service; (703) 358–2156.

SUPPLEMENTARY INFORMATION: The Service publishes a notice in the Federal Register each year announcing the deadline for project propsoals, the amount of money available for Sport Fish and Wildlife Restoration projects, and the focus areas identified for the year. Focus areas are used to promote and encourage efforts that address priority needs of the State fish and wildlife agencies.

The focus areas contained in this notice were developed in cooperation with the Grants-in-Aid Committee of the International Association of Fish and Wildlife Agencies and represent that group's assessment of priority projects. The focus areas are provided as a guide so that applicants will know the types of projects that will likely score higher in the rankings.

Changes made since last year's program include a new application deadline of May 1, 1997, revised focus areas, and the requirement for applicants to submit a completed Application for Federal Assistance (Standard Form 424) including Budget Information—Non-Construction Programs (Standard Form 424A) and Assurances—Non-Construction Programs (Standard Form 424B).

States, local governments, charitable and educational institutions, and other authorized recipients are authorized to apply for grants according to these procedures. The Department of the Interior has promulgated rules (43 CFR Part 12) adopting common rules developed by the Office of Management and Budget as required by OMB Circulars A–102 and A–110 that contain administrative requirements that apply to these grants. This annual grant program does not contain information collection requirements for which approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995, as specified in 43 CFR Part 12.4 are required. The information collection requirements for this grant program are those necessary to comply with 43 CFR Part 12, which include (a) project narrative; and (b)

compliance with Federal laws, regulations, and policies. Record keeping includes the tracking of costs and accomplishments, monotoring progress and evaluating accomplishments, and reporting requirements. The Standard Form 424 series prescribed by OMB Circulars A–102 and A–110 have the OMB clearance number 0348–0043.

Dated: February 28, 1997.

Jay L. Gerst,

Acting Director.

Procedures for Selecting and Funding Federal Aid in Sport Fish and Wildlife Restoration Administrative Projects

A. Purpose

This statement establishes procedures for selecting administrative projects to be funded by the Federal Aid in Sport Fish Restoration and Federal Aid in Wildlife Restoration programs. These projects are funded by grants to States, local governments, charitable and educational institutions, or other authorized recipients to accomplish public purposes relating to administering the Sport Fish and Wildlife Restoration Programs and to facilitate the efforts of the States in implementing these programs.

B. Background

The mission of the two grant programs is to strengthen the ability of State and Territorial fish and wildlife agencies to meet effectively the consumptive and nonconsumptive needs of the public for fish and wildlife resources. The Federal Aid in Sport Fish Restoration Act and the Federal Aid in Wildlife Restoration Act authorize the Secretary of the Interior to cooperate with the States and to use administrative funds for carrying out the purposes of the Acts. The Fish and Wildlife Coordination Act (16 U.S.C. 661) provides the authority to provide financial assistance to Federal, State, and public or private parties to facilitate fish and wildlife programs.

Administrative funds are deducted each year from the total amounts of funds available under the Federal Aid in Sport Fish Restoration Act and the Federal Aid in Wildlife Restoration Act. The statutory provisions related to administrative deductions are as follows:

Federal Aid in Sport Fish Restoration (SFR)

Federal Aid Administrative Funds for sport fish restoration may not exceed 6 percent of the deposits in the SFR Account of the Aquatic Resources Trust Fund. These funds may be used for administrative projects for the ''conduct of necessary investigations, administration, and the execution of this Act and for the aiding in the formulation, adoption, or administration of any compact between two or more States for the conservation and management of migratory fishes in marine or fresh waters.'' (Section 4 of the Act as amended by P.L. 98–369, 16 U.S.C. 777c)

Federal Aid in Wildlife Restoration (WR)

Federal Aid Administrative Funds for wildlife restoration may not exceed 8 percent of the excise tax receipts deposited in the WR Fund. These funds may be used for the ''administration and execution of this Act and the Migratory Bird Conservation Act.'' (Section 4 of the Act, 16 U.S.C. 669c)

After making administrative deductions as specified above, the remainder of the funds will be apportioned to the States in accordance with the formulas contained in the Acts. The Service will strive to minimize administrative deductions in order to maximize apportionments to the States.

C. Availability of Funds

In fiscal year 1998, the amounts of funds estimated to be available for administrative projects are $2,000,000 for sport fish restoration and $2,000,000 for wildlife restoration.

D. Interstate Compacts

The Service also will make available a total of $600,000 annually, without competition, for funding The Atlantic States Marine Fisheries Commission, Gulf States Marine Fisheries Commission, and pacific States marine Fisheries Commission, as authorized by law. Requests for additional amounts that may be eligible, must compete with other proposals for Administrative Funds. Proposals will be subject to all of the requirements in Section E.

E. Eligibility Requirements

The Service's Division of Federal Aid will review each proposal to determine if proposals are eligible for funding. To be eligible for funding, proposals must meet the following:

1. Authority—The project being proposed must be consistent with the missions of the programs authorized by the SFR/WR laws and regulations.

2. Scope—The problem or need addressed in the proposal is of direct concern to one-half or more of the States or of national significance, but confined to a lesser geographic area. The scope of marine resources proposals must also address a need that is of direct concern to a majority of States on a specific coast.

3. Significance—The problem or need addressed is deserving of the level of attention proposed.

4. Feasibility—The proposed objectives can be attained in the amount of time and with the personnel and resources requested.

5. Cost-effectiveness—The expected results of accomplishing the proposal are worth the costs to be expended.

6. Period—The maximum duration for any approved projects will be three years. New proposals may be submitted to extend a project beyond the original three-year period.

7. Documentation—Proposals must address each section of the documentation as listed under Submission Requirements, Section G.

F. Application Process

1. All proposals including funding requests for administrative projects must be submitted to the Chief, Division of Federal Aid, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, ARLSQ. 140, Arlington, Virginia, 22203. Proposals originating within the Service must have prior approval by the appropriate Regional Director or Assistant Director.

2. Each year, a Notice will be published in the Federal Register announcing the deadline for submitting proposals. The Notice will also announce total funds available for wildlife and sport fish restoration projects. A table with the approximate dates for each step of the process is provided in Appendix A.

G. Submission Requirements

An original and two copies of each proposal for Federal Aid Administrative funds must be submitted in the following format:

1. *Application for Federal Assistance* Standard form 424 is prescribed by Office of Management and Budget Circular A–110 and the common rule (Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Government). The SF 424 consists of a coversheet, the SF 424A consists of a budget sheet, and the SF 424B consists of compliance assurances. Proposals received without these forms will not be accepted.

2. *Title*—A short descriptive name of the proposal.

3. *Objective*—What will this proposal do? State a concise statement of the purpose of the proposal in quantified terms where possible.

4. *Need*—Why address this problem?

a. State the problem or need that this proposal is intended to address. Make

references to any focus areas that the proposal addresses.

b. Describe the number of states affected by the project, how they will benefit, and expressed support for the proposal. If the proposal is confined to a specific geographic area, describe the national significance of the proposal.

c. Brief status report on the history of previous work conducted by the proposer or others to address this need.

5. *Expected Results or Benefits*—What will be gained by funding this proposal? Describe the significance of accomplishing the project relative to the stated need. Relate benefits of satisfactorily completing the project to the States' fish and wildlife programs. In addition to stating how the results will be useful, describe provisions for making the product or results available and usable to those affected by the problem of need. Benefits should be expressed in quantified terms, i.e., angler days, harvest per unit effort, improvements to State administration, dollars saved, etc.

6. *Approach*—How will the proposed project be conducted? Describe how the work will be conducted including a description of techniques and methods to be used, milestones, and a schedule of accomplishments.

7. *Resumes*—What are the qualifications of key personnel? Include resumes and names of key individuals who will be involved in the project, stating their particular qualifications for undertaking the project.

8. *Project Costs*—Submit a completed SF 424A, Budget Information—Non-Construction Programs. Multi-year proposals must include an itemized budget showing funds required for each severable part of the proposal. A severable part is defined as that portion of a proposal that results in a completed product or service.

H. Focus Areas

Focus areas are those specific areas in which the States are seeking information and assistance in administering or implementing the Sport Fish and Wildlife Restoration programs. Focus areas will be announced each year by the Service, based on recommendations from the Grants-In-Aid Committee (GIAC) in accordance with the bylaws of the International Association of Fish and Wildlife Agencies (IAFWA). Each year, the GIAC will be asked to submit recommendations for focus areas after its September meeting. Each year a Federal Register Notice will announce the Focus Areas, along with the amount of funds available for administrative projects.

The following focus areas were identified as priority needs of the States and those proposals addressing these needs will likely be given priority by the States during the ranking in 1997.

1. Outreach

Providing public information on fishing, hunting, trapping, and wildlife-associated recreation.

a. Provide innovative approaches to introducing people to hunting and fishing including emphasis on families.

b. Create public awareness of the value of Sport Fish and Wildlife Restoration Funds.

c. Focus public attention on and enhance public awareness of the economic value of managing fish and wildlife resources for both consumptive and non-consumptive recreation.

d. Provide better understanding of how to reach constituents with information.

2. Education

Teaching or training people about fish and wildlife resources and the responsible use of the resources.

a. Advance the public's understanding of importance of actively managing fish and wildlife resources.

b. Promote natural resources and environmental education of ''K through 12'' students.

c. Advance public understanding of the importance of biological diversity in maintaining diverse hunting and fishing opportunities.

d. Provide for continuing education and training for state fish and wildlife biologists.

3. Management

Handling, directing, manipulating, and managing fish and wildlife populations and providing improved public access to these populations. These focus areas relate to hands-on responsibilities of fish and wildlife management agencies.

a. Restore, create, enhance, and protect fish and wildlife.

b. Protect, create, and enhance fish and wildlife recreational opportunities.

c. Provide, enhance, or maintain public access to fish and wildlife resources.

4. Research

Conducting investigations, inquiries, searches, examinations, and experiments for the discovery and interpretation of facts.

a. Evaluate effectiveness of incorporating constituent involvement and information in fish and wildlife resource management.

b. Measure effectiveness of habitat restoration, creation, and enhancement techniques.

5. Administration

Providing service, supervisory, and management responsibilities that directly link to supporting fish and wildlife agency affairs.

a. Provide better understanding of constituents and their needs.

b. Measure changing social, economic, and political environment within which fish and wildlife must be managed.

c. Advance automated licensing and fiscal data collections for fish and wildlife agencies.

I. Proposal Review and Selection Process

1. Each proposal will be reviewed for eligibility as defined in section E. The review will be conducted by the Washington Office staff. The final determination for eligibility will be made at a meeting that includes staff from Washington, with the Chair of the GIAC as an observer.

2. All applicants will be notified that their proposal has been determined eligible or ineligible.

3. Copies of eligible proposals will be forwarded to the Chair, GIAC, along with lists of ongoing grants and ineligible proposals. The Chair, GIAC, will forward copies to the voting members of the GIAC.

4. Voting members of the GIAC will review and rate each eligible proposal high, medium or low.

5. All ratings from GIAC voting members and comments from Service Offices will be returned to the Division of Federal Air in Washington.

6. The Division of Federal Aid will summarize the ratings and comments.

7. A summary of the comments and ratings will be provided to the Chair, GIAC, for review at the GIAC September meeting.

8. During the September meeting of IAFWA, the GIAC will evaluate and rank eligible proposals based on the needs of the States. The GIAC will forward its rankings and recommendations to the Service in accordance with IAFWA procedures.

9. The Division of Federal Aid will summarize and consolidate all rankings and comments and develop recommendations for proposal selections and awards. The recommendations may be for partial funding of any proposal.

10. The Aid Division's recommendations will be forwarded to the Director of the Service. The Director will review the recommendations and make the final decision on project selections and funding.

11. The Service will notify each eligible applicant in writing of the final disposition of their proposal.

12. The Director will notify the Regional Directors and the Chair, GIAC, of the proposals selected for funding.

J. Lobbying Restrictions

During the review of proposals, grant applicants may not engage in any activities that might be considered as attempts to influence Federal reviewers or approving officials. If the activities are determined to be lobbying, the proposal will be disqualified for Federal Aid Administrative Funds.

K. Awards and Funding

1. The Service's Division of Contracting and General Services will prepare and sign the formal award agreements. The Federal Aid Office, may provide technical assistance to the Division of Contracting and General Services in finalizing the award agreements. The formal award agreements will be forwarded to the awardees for signature and must be signed by the Service and authorized awardee officials before they become valid agreements. This process may require up to 60 days to complete. The Service is not responsible for costs incurred prior to the effective date of a signed agreement; therefore, the starting date for all projects should be planned accordingly.

2. All funding must comply with the bone fide need rule established by 31 USC 1502a requiring that the entire amount of a project must be obligated in the fiscal year the grant is approved unless the project is severable. A project is severable only if it can be separated into components that independently meet a separate need.

3. Non-profit grantees must maintain a financial management system in accordance with the Office of Management and Budget Circular A–110. State and local governments must maintain a financial management system in accordance with OMB Circular A–102 and 43 CFR Part 12.

L. Project Administration

Proposals awarded funding will be assigned to a Project Officer. Project Officers are those persons representing the Contracting Officer on technical matters relating to the responsibilities of the grantee. They provide assistance that includes:

1. Assisting Service contracting officials in completing the award agreement;

2. Serving as the Service's point of contact after the award agreement is signed;

3. Receiving and approving bills; and

4. Monitoring project performance and assuring that the awardee adheres to the award agreement.

SUMMARY OF EVENTS—APPENDIX A

Target date	Event
March 14	**Federal Register** Notice announcing availability of Federal Aid Funds and focus areas for grant applications.
May 1	Washington Office receives proposals.
June 16	Washington Office with assistance from the Regions determines eligibility (Chair of the Grants-In-Aid Committee (GIAC) participates as an observer).
July 1	Service forwards copies of eligible proposals to voting members of the GIAC (includes summary list of ongoing grants and list of ineligible proposals)
July 1	Service sends letters to all applicants informing them that their proposal is eligible or ineligible.
August 15	Voting members of the GIAC forward comments and ratings to Chief, FA (Ratings of High, Medium or Low).
September 1	Chief, FA, summarizes comments and ratings and forwards to Chair, GIAC, for review at the September meeting.
September 15	GIAC reviews and ranks proposals and forwards rankings and recommendations to Service, along with recommendations for Focus Areas for the following years.
October 31	Federal Aid summarizes all rankings and recommendations for consideration by the Director.
November 15	Director selects proposals for funding.
November 30	Federal Aid notifies applicants and Chair, GIAC, of the final disposition of proposals.
March 1	Contracting and General Services awards grants.

[FR Doc. 97–5868 Filed 3–7–97; 8:45 am]

BILLING CODE 4310–55–M

Issuance of Permit for Marine Mammals

On November 7, 1996, a notice was published in the Federal Register, Vol. 61, No. 217, Page 57694, that an application had been filed with the Fish and Wildlife Service by the Chicago Zoological Park, Brookfield Zoo for a permit (PRT–821744) to import 3 juvenile walrus for public display.

Notice is hereby given that on February 19, 1997, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On November 29, 1996, a notice was published in the Federal Register, Vol. 61, No. 231, Page 60722, that an application had been filed with the Fish and Wildlife Service by the Alaska Science Center for renewal of a permit (PRT–766818) to take (capture) sea otters for scientific research.

Notice is hereby given that on February 7, 1997, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On December 20, 1996, a notice was published in the Federal Register, Vol. 61, No. 246, Page 67340, that an application had been filed with the Fish and Wildlife Service by the Oregon Coast Aquarium for a permit (PRT–823259) to import 2 sea otters for the purpose of public display.

Notice is hereby given that on January 27, 1997, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On December 11, 1996, a notice was published in the Federal Register, Vol. 61, No. 239, Page 65229, that an application had been filed with the Fish and Wildlife Service by the Point Defiance Zoo for a permit (PRT–822531) to import 2 polar bears for the purpose of public display.

Notice is hereby given that on January 21, 1997, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and

Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Rm. 430, Arlington, Virginia 22203, phone (703) 358–2104 or Fax (703) 358–2281.

Dated: March 4, 1997.

Caroline Anderson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 97–5820 Filed 3–7–97; 8:45 am]

BILLING CODE 4310–55–M

Propylene and Ethylene Pipeline Right-of-Way Permit Application Crossing Fish and Wildlife Service National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Fish and Wildlife Service (Service) advises the public that BASF Corporation of Freeport, Texas has applied for the installation of an 8.625″ O.D. welded steel pipeline across Service land tracts 40c and 40g in Brazoria County, Texas. The pipeline will be installed solely within an existing pipeline 300 foot right-of-way corridor, known as the ''Dow Corridor''. The project will temporarily impact 4.3 acres. An Environmental Analysis and Cultural Resource Review has been prepared and is on file. This notice informs the public that the Service will be proceeding with the processing of the application, the compatibility determination and the approval processing which includes the preparation of the terms and conditions of the permit.

DATES: Written comments should be received on or before April 9, 1997 to receive consideration by the Service.

ADDRESSES: Comments should be addressed to: Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, (RE), Albuquerque, New Mexico 87103–1306. Attention: Wanda McKean, Realty Specialist.

FOR FURTHER INFORMATION CONTACT: Wanda McKean, Realty Specialist, at the above Albuquerque, New Mexico address (505 248–7415 or FAX 505 248–6803).

SUPPLEMENTARY INFORMATION: The refuge manager, for the Brazoria National Wildlife Refuge has approved the route of the pipeline that lies within an existing 300 foot wide right-of-way corridor known as the ''Dow Corridor''. It crosses the northwest corner portion of the Refuge known as Hoskins Mound.

Right-of-way applications for pipelines are to be filed in accordance with section 28 of the Mineral Leasing Act of 1920 (30 U.S.C.), as amended by the Act of November 16, 1973 (37 Stat. 576, Pub. L. 93–153).

Dated: February 27, 1997.

Nancy Kaufman,

Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 97–5828 Filed 3–7–97; 8:45 am]

BILLING CODE 4310–55–M

Notice of Receipt of Application for Approval

The following applicant has applied for approval to conduct certain activities with birds that are protected in accordance with the Wild Bird Conservation Act of 1992. This notice is provided pursuant to Section 112(4) of the Wild Bird Conservation Act of 1992, 50 CFR 15.26(c).

Applicant: Heather Bright, Psittacine Central, Dover, FL. The applicant wishes to establish a cooperative breeding program for the Monk or Quaker parakeet (Myiopsitta monachus). Ms. Bright wishes to be an active participant in this program with one other private individual. The Greater Orlando Bird Club has assumed the responsibilty for the oversight of the program.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203 and must be received by the Director on or before April 9, 1997.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: March 4, 1997.

Susan Lieberman,

Chief, Branch of Operations, Office of Management Authority.

[FR Doc. 97–5839 Filed 3–7–97; 8:45 am]

BILLING CODE 4310–55–P

Bureau of Land Management

[AZ–910–0777–61–241A]

State of Arizona Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Arizona Resource Advisory Council Meeting, notice of meeting cancellation.

SUMMARY: This notice announces the cancellation of the March 20, 1997 meeting of the Arizona Resource Advisory Council. The meeting was scheduled to begin at 8:30 a.m. in the 1A Conference Room at the Bureau of Land Management Arizona State Office, 222 North Central Avenue, Phoenix, Arizona. For Further Information Contact: Deborah Stevens or Ken Mahoney Bureau of Land Management, Arizona State Office, 222 North Central Avenue, Phoenix, Arizona 85004–2203, (602) 417–9512.

Gina Ramos,

Acting Deputy State Director, Resources Division.

[FR Doc. 97–5787 Filed 3–7–97; 8:45 am]

BILLING CODE 4316–32–M

NATIONAL PARK SERVICE

Notice of Intention To Issue a Concession Contract for Crater Lake National Park

SUMMARY: Notice is hereby given in accordance with the requirements of 36 CFR 51.5 that the National Park Service intends to issue a 3-year concession contract to continue operations currently conducted at Crater Lake National Park to provide park visitors with hotel, food, gift, touring, and other services. This action is necessary to avoid disruption of the provision of these services and to satisfy requirements that concession contracts do not extend for a continuous period exceeding 30 years. In accordance with the requirements of Public Law 89–249 (16 U.S.C. 20d), the current concessioner, having operated to the satisfaction of the Secretary, has a right to a preference in this renewal action.

SUPPLEMENTARY INFORMATION: Notwithstanding the short term action which is the subject of this notice, it is the intention of the National Park Service that a Prospectus for a long term concession contract at Crater Lake will be issued no less than one year prior to the expiration of the 3-year contract to be issued. Before this action is taken,

the National Park Service must complete certain planning actions that will determine what specific services will be required and what changes from current operations will be necessary. That planning is currently underway, but is not complete. Additionally, with any change of concessioner, payment will be due to the current concessioner from the successor for real property assets at a level that is likely to exceed $3,000,000, but has not yet been definitively estimated. Additional sums for personal property would also be due and have not yet been estimated. Also, it is necessary in the short contract that the operating concessioner invest an additional $650,000 in furniture and fixtures to equip dormitory buildings that are under construction. Given these collective circumstances, it is not believed to be practical to expect a competitive successor offer at this time.

Therefore, to effect the necessary investment and to allow for the necessary planning to be completed, it is the intention of the National park Service to enter into a 3-year contract with the current, preference holding concessioner.

Information about this notice can be sought from: National Park Service, Assistant Field Director, Operations, Pacific West Region, Attention: Mr. Stephen G. Crabtree, 600 Harrison Street, Suite 600, San Francisco, California 94107–1372, or call: (415) 427–1366.

Dated: February 21, 1997.

Patricia Neubacher,

Acting Regional Director, Pacific West Region.

[FR Doc. 97–5857 Filed 3–7–97; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Issue a Prospectus for the Operation of Stables and Pack Station Services and Facilities Within Kings Canyon National Park

SUMMARY: The National Park Service is seeking a concessioner to operate, under a 4-year permit, a pack station providing pack and saddle animal services and facilities within the Cedar Grove area of Kings Canyon National Park, as well as guided day-ride services and facilities within the Grant Grove area of Kings Canyon National Park. Both the Cedar Grove Pack Station and Grant Grove Stables would be operated for the public under the provisions of a Concession Permit. This notice is the formal announcement of the availability of this business opportunity and the initiation of the contracting process.

SUPPLEMENTARY INFORMATION: The pack station is located at an elevation of 4,500 feet and the stables at 6,500 feet in the Southern Sierra Nevada. Both is a summer seasonal operation serving visitors to Sequoia and Kings Canyon National Parks. The existing operator has a preference in the renewal of this concession permit. The award will be fully competitive based upon the requirements of this Prospectus.

If you are interested in this business opportunity, please ask to be placed on the mailing list by writing or calling: National Park Service, Concession Management Office, Sequoia National Park, Three Rivers, CA 93271, or call: (209) 565–3103—Peggy Williams.

When the Prospectus is issued, submittals will be accepted for a forty-five (45) day period under terms that will be described in the Prospectus. The release of the Prospectus is expected to occur shortly after the publication of this notice.

Dated: February 11, 1997.

Michael J. Tollefson,

Superintendent, Sequoia and Kings Canyon National Parks.

[FR Doc. 97–5865 Filed 3–7–97; 8:45 am]

BILLING CODE 4310–70–P

Notice of the Intention To Issue a Concession Contract at Callville Bay, Lake Mead National Recreation Area

SUMMARY: Pursuant to the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20 et seq.), notice is hereby given that the National Park Service intends to issue a concession contract at Lake Mead National Recreation Area for a period of two years. This short contract is necessary to allow the continuation of public services during the completion period of the planning documents for the Callville Bay location in the park. The current concessioner has performed its obligation to the satisfaction of the Secretary and retains its right of preference under this administrative action.

SUPPLEMENTARY INFORMATION: The concession contract at Lake Mead National Recreation Area expired on December 31, 1996. The National Park Service will not renew this contract for an extended period until planning can be completed to determine the future direction for concession services at the Callville Bay location within Lake Mead National Recreation Area. This necessary planning process has begun and will have a direct affect on future concession activities. It is anticipated that this planning process will conclude within the next several months. Until that planning process is completed, it will not be in the best interest of Lake Mead National Recreation Area to enter into a long term concession contract. For these reasons, it is the intention of the National Park Service to issue a short term contract at this time, complete the planning process and then to conduct a public contracting process for selection of a concessioner for an extended period.

Information regarding this notice can be sought from Mr. Mac Foreman, Office of Concession Program Management, Pacific Great Basin System Support Office, 600 Harrison Street, Suite 145, San Francisco, California 94107–1372, or by calling (415) 744–3981.

Dated: January 29, 1997.

Stephen G. Crabtree,

Acting Field Director, Pacific West Area.

[FR Doc. 97–5866 Filed 3–7–97; 8:45 am]

BILLING CODE 4310–70–P

Notice of Intent To Issue a Prospectus for the Operation of Pack Station Services and Facilities Within Sequoia National Park

SUMMARY: The National Park Service is seeking a concessioner to operate, under a 4-year permit, a pack station providing pack and saddle animal services and facilities within the Wolverton area of Sequoia National Park. These facilities would be operated for the public under the provisions of a Concession Permit. This notice is the formal announcement of the availability of this business opportunity and the initiation of the contracting process.

SUPPLEMENTARY INFORMATION: The pack station is located at an elevation of 7,000 feet in the southern Sierra Nevada. It is a summer seasonal operation serving visitors to Sequoia National Park. The existing operator does not have a preference in the renewal of this concession permit. The award will be fully competitive based upon the requirements of this Prospectus.

If you are interested in this business opportunity, please ask to be placed on the mailing list by writing or calling: National Park Service, Concession Management Office, Sequoia National Park, Three Rivers, CA 93271, or call: (209) 565–3103—Peggy Williams.

When the Prospectus is issued, submittals will be accepted for a SIXTY (60) day period under terms that will be described in the Prospectus. The release of the Prospectus is expected to occur

shortly after the publication of this notice.

Dated: February 11, 1997.

Michael J. Tollefson,

Superintendent, Sequoia and Kings Canyon National Parks.

[FR Doc. 97–5858 Filed 3–7–97; 8:45 am]

BILLING CODE 4310–70–M

National Park Service

Notice of Intent To Issue a Prospectus for the Operation of Pack Station Services and Facilities Within Sequoia National Park

SUMMARY: The National Park Service is seeking a concessioner to operate, under a 4-year permit, a pack station providing pack and saddle animal services and facilities within the Mineral King area of Sequoia National Park. These facilities would be operated for the public under the provisions of a Concession Permit. This notice is the formal announcement of the availability of this business opportunity and the initiation of the contracting process.

SUPPLEMENTARY INFORMATION: The pack station is located at an elevation of 7,800 feet in the Southern Sierra Nevada. It is a summer seasonal operation serving visitors to Sequoia National Park. The existing operator does not have a preference in the renewal of this concession permit. The award will be fully competitive based upon the requirements of this Prospectus.

If you are interested in this business opportunity, please ask to be placed on the mailing list by writing or calling: National Park Service, Concession Management Office, Sequoia National Park, Three Rivers, CA 93271, or call: (209) 565–3103—Peggy Williams.

When the Prospectus is issued, submittals will be accepted for a Sixty (60) day period under terms that will be described in the Prospectus. The release of the Prospectus is expected to occur shortly after the publication of this notice.

Dated: February 11, 1997.

Michael J. Tollefson,

Superintendent, Sequoia and Kings Canyon National Parks.

[FR Doc. 97–5859 Filed 3–7–97; 8:45 am]

BILLING CODE 4310–70–M

National Park Service

Cape Cod National Seashore South Wellfleet, Massachusetts Cape Cod National Seashore Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App 1, section 10), that a meeting of the Cape Cod National Seashore Advisory Commission will be held on Friday, March 28, 1997.

The Commission was reestablished pursuant to Public Law 99–349, Amendment 24. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, with respect to matters relating to the development of the Cape Cod National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore.

The Commission members will convene at Headquarters, Marconi Station at 10:00 a.m. for a field trip to the former North Truro Air Force Station.

The Commission members will then meet at 1:00 p.m. at Headquarters, Marconi Station, for their regular business meeting which will be held for the following reasons:

1. Adoption of Agenda
2 Approval of Minutes of Previous Meeting (01/31/97)
3. Reports of Officers
   Use & Occupancy
   GMP
   Nickerson Fund
4. Superintendent's Report
   Site Planning—(Fort Hill, Pamet Cranberry Bog, former North Truro AFS)
   Dune Shacks
   Hatches Harbor/Airport
   News from Washington
5. Old Business—Advisory Commission Handbook
6. New Business—Follow-up discussions—Former North Truro AFS—New name?
7. Agenda for next meeting
8. Date for next meeting
9. Public comment
10. Adjournment

The meeting is open to the public. It is expected that 15 persons will be able to attend the meeting in addition to the Commission members.

Interested persons may make oral/written presentations to the Commission during the business meeting or file written statements. Such requests should be made to the park superintendent at least seven days prior to the meeting. Further information concerning the meeting may be obtained from the Superintendent, Cape Cod National Seashore, 99 Marconi Site Road, Wellfleet, MA 02667.

Richard Obernesser,

Acting Superintendent.

[FR Doc. 97–5856 Filed 3–7–96; 8:45 am]

BILLING CODE 4310–70–P

Native American Graves Protection and Repatriation Act Review Committee: Meeting—Revised Notice

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with the Federal Advisory Committee Act (FACA), 5 U.S.C. Appendix (1988), that a meeting of the Native American Graves Protection and Repatriation Act (NAGPRA) Review Committee will be held on March 25–27, 1997 in Norman, OK.

The Review Committee will meet at the Oklahoma Center for Continuing Education (OCCE) on the campus of the University of Oklahoma in Norman. Meetings will begin each day at 8:30 a.m. and conclude not later than 5:00 p.m.

The Native American Graves Protection and Repatriation Act Review Committee was established by Public Law 101–601 to monitor, review, and assist in implementation of the inventory and identification process and repatriation activities required under the statute.

This notice amends the meeting agenda to include presentation of additional information regarding a dispute over the disposition of a carved wooden figure from Hawaii in the possession of the City of Providence and preparation of the committee's 1995–1996 report to Congress. The agenda will also include discussion of the compliance by Federal agencies, implementation of the statute in the States of Oklahoma and Texas, and the disposition of culturally unidentifiable human remains.

This meeting will be open to the public. However, facilities and space for accommodating the public are limited. Any member of the public may file a written statement concerning the matters to be discussed with Dr. Francis P. McManamon, Departmental Consulting Archeologist.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact Dr. Francis P. McManamon, Departmental Consulting Archeologist, Archeology and Ethnography Program (MS 2275), National Park Service, P.O.

Box 37127, Washington, DC 20013–7127; telephone: (202) 343–4101. Draft summary minutes of the meeting will be available for public inspection approximately eight weeks after the meeting at the office of the Departmental Consulting Archeologist, 800 North Capitol St. NW, Suite 210, Washington, DC.

Dated: February 26, 1997.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 97–5782 Filed 3–7–97; 8:45 am]

BILLING CODE 4310–70–P

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects From Chautauqua and Onondaga Counties, NY, in the Possession of the Springfield Science Museum, Springfield, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003 (d), of the completion of an inventory of human remains and associated funerary objects in the possession of the Springfield Science Museum, Springfield, MA.

A detailed assessment of the human remains was made by Springfield Science Museum professional staff in consultation with representatives of the Onondaga Nation, the Seneca Nation of Indians, and the Tonawanda Band of Senecas.

In 1925, human remains representing two individuals were donated to the Springfield Science Museum by Mr. J.T. Bowne. No known individuals were identified. The approximately 165 associated funerary objects include mammal bone implements, stone implements; stone pendants; coral fossils; red ochre; a brass triangular point; a metal ax; glass beads; shells and shell beads; charred corn and beans; pottery; a red paint stick; and sheet brass.

In 1907, Mr. J.T. Bowne purchased these human remains and associated funerary objects from M.R. Harrington, who obtained these remains from the Silverheels Site and the Page Jimmerson Site, in Chautauqua County, NY.

These two sites, Silverheels Site and the Page Jimmerson Site were all used as cemetery areas between the late precontact period into the mid-nineteenth century. The associated funerary objects and manner of internments indicate a continuity of occupation throughout this period consistent with known traditional Iroquoian practices. Consultation evidence presented by the Seneca Nation indicates these associated funerary objects and burial practices are identical to Iroquoian, specifically Seneca, traditional practices.

Based on the above mentioned information, officials of the Springfield Science Museum have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of two individuals of Native American ancestry. Officials of the Springfield Science Museum have also determined that, pursuant to 25 U.S.C. 3001 (3)(A), the approximately 165 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Springfield Science Museum have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Seneca Nation of Indians.

In 1861, human remains representing one individual was donated to the Springfield Science Museum by Mr. H.O. Marcy. No known individual was identified. No associated funerary objects are present.

H.O. Marcy removed these human remains from the ''Fort Lot Site'', Onondaga County, NY. Consultation evidence presented by the Onondaga Nation and the Haudenosunee Standing Committee on Burial Rules and Regulations indicates that this site is likely one of several early Onondaga historic villages in Onondaga County, NY which dated from the seventeenth and eighteenth centuries. These historic villages are often referred to as ''forts'' or ''lots'' in nineteenth century historical documents.

Based on the above mentioned information, officials of the Springfield Science Museum have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the Springfield Science Museum have also determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Onondaga Nation.

This notice has been sent to officials of the Haudenosaunee Standing Committee on Burial Rules and Regulations, the Onondaga Nation, the Seneca-Cayuga Tribe of Oklahoma, the Seneca Nation of Indians, and the Tonawanda Band of Senecas. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact John Pretola, Curator of Anthropology, Springfield Science Museums, 236 State Street, Springfield, MA 01103; telephone: (413) 263–6800, before April 7, 1997. Repatriation of the human remains and associated funerary objects to the Seneca Nation of Indians and the Onondaga Nation may begin after that date if no additional claimants come forward.

Dated: February 24, 1997.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 97–5781 Filed 3–7–97; 8:45 am]

BILLING CODE 4310–70–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act Meeting; March 11, 1997 Board of Directors Meeting

TIME AND DATE: Tuesday, March 11, 1997, 1:00 p.m. (OPEN Portion) 1:30 p.m. (CLOSED Portion).

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW., Washington, DC.

STATUS: Meeting OPEN to the Public from 1:00 p.m. to 1:30 p.m. Closed portion will commence at 1:30 p.m. (approx.)

MATTERS TO BE CONSIDERED:

1. President's Report
2. New Appointment
3. Approval of December 10, 1996 Minutes (Open Portion)
4. Meeting schedule through December, 1997

FURTHER MATTERS TO BE CONSIDERED: (Closed to the Public 1:30 p.m.).

1. Finance Project in Russia
2. Insurance Project in Bangladesh
3. Pending Major Projects
   Finance Project in Venezuela
4. Approval of December 10, 1996 Minutes (Closed Portion)

CONTACT PERSON FOR INFORMATION: Information on the meeting may be obtained from Connie M. Downs at (202) 336–8438.

Dated: February 25, 1997.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 97–6060 Filed 3–6–97; 2:38 pm]

BILLING CODE 3210–01–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Bureau of Justice Assistance

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Bureau of Justice Assistance, Office of Justice Programs, Justice Department.

ACTION: Notice of information collection under review; Local law enforcement block grants progress reporting form.

Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the Federal Register on December 24, 1996 and allowed 60 days for public comment.

The purpose of this notice is to allow an additional 30 days for public comments until April 9, 1997. This process is conducted in accordance with the Code of Federal Regulations, 5 Part 1320.10. Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC, 20503. Additionally, comments may be submitted to OMB via facsimile to 202–395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW, Washington, DC, 20530. Additionally, comments may be submitted to DOJ via facsimile to 202–514–1534. Written comments and suggestions from the public and affected agencies should address one or more of the following points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) Type of information collection: New data collection.

(2) The title of the form/collection: Local Law Enforcement Block Grants Progress Reporting Form.

(3) The agency form number, if any, and the applicable component of the Department sponsoring the collection. Form: None. Bureau of Justice Assistance, Office of Justice Programs, United States Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract. Primary: State and local units of government. Other: None. This data collection will gather information from each jurisdiction on general spending operations within the purpose areas of the grant.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 3200 respondents at 45 minutes per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 4800 annual burden hours.

Public comment on this proposed information collection is strongly encouraged.

Dated: March 4, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–5736 Filed 3–7–97; 8:45 am]

BILLING CODE 4410–18–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (97–026)]

National Environmental Policy Act; Cassini Mission

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of intent to prepare a supplemental environmental impact statement (SEIS) for implementation of the Cassini mission to Saturn and its moons.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1508), and NASA's policy and procedures (14 CFR Part 1216 Subpart 1216.3), NASA intends to prepare a supplement to the Cassini mission Final Environmental Impact Statement (FEIS). The SEIS will focus on updated information pertinent to the consequence and risk analyses of potential accidents during the launch and cruise phases of the mission. Such accidents could result in a release of plutonium dioxide from the three Radioisotope Thermoelectric Generators (RTG's) and the potential 157 Radioisotope Heater Units (RHU's) onboard the Cassini spacecraft. The currently planned mission involves the launch of the Cassini spacecraft from Cape Canaveral Air Station (CCAS), Florida, during the primary launch opportunity in October 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Mark R. Dahl, NASA Headquarters, Code SD, Washington, DC 20546–0001; 202–358–0306.

SUPPLEMENTARY INFORMATION: The planned Cassini mission is an international cooperative effort of NASA, the European Space Agency, and the Italian Space Agency, to explore the planet Saturn and its environment. Saturn is the second-largest and second-most massive planet in the solar system and has the largest, most visible dynamic ring structure of all the planets. The planned mission is an important part of NASA's program for exploration of the solar system, the goal of which is to understand the system's birth and evolution. The Cassini mission would involve a 4-year scientific exploration of Saturn, its atmosphere, moons, rings, and magnetosphere. The Cassini spacecraft consists of the Cassini Orbiter and the detachable Huygens Probe.

For several months, prior to its arrival at Saturn in June 2004, the spacecraft would perform scientific observations of the planet. The planned arrival date at Saturn provides a unique opportunity to have a distant flyby of Saturn's outer satellite Phoebe. About 3 weeks before its first flyby of Titan, Saturn's largest moon, the Huygens Probe would be released for a 2.5 hour parachute descent into Titan's atmosphere. The probe would sample and determine the composition of Titan's atmosphere during its descent, and gather data on

the moon's landscape. The Cassini Orbiter would then continue its Saturn orbital tour, providing opportunities for ring imaging, magnetospheric coverage, and radio (Earth), solar, and stellar occultations of Saturn, Titan, and the ring system. A total of 35 close Titan flybys have also been planned for the 4-year tour, along with 4 close flybys of selected icy satellites, and 29 more distant satellite encounters. The scientific information gathered by the Cassini mission could help provide clues to the evolution of the solar system and the origin of life on Earth.

The Cassini spacecraft would carry three RTG's that use the heat of decay of plutonium dioxide to generate electric power for the spacecraft and its instruments. The spacecraft would also use up to 157 RHU's, each containing a small amount of plutonium dioxide, to generate heat for controlling the thermal environment of the spacecraft and several of its instruments.

The Cassini FEIS was made available to Federal, state, and local agencies, the public, and other interested parties on July 21, 1995. In addition to the No-Action alternative, the FEIS addressed in detail three alternatives for completing preparations for, and operating the Cassini mission to Saturn and its moons. On October 20, 1995, utilizing the analyses in the FEIS along with other important considerations such as programmatic, technical, economic, international relations, and other factors, the Record of Decision selecting the Proposed Action was rendered.

The Proposed Action consists of completing preparations for and implementing the Cassini mission to Saturn and its moons, with a launch of the Cassini spacecraft onboard a Titan IV(SRMU)/Centaur. The launch would take place at CCAS during the primary launch opportunity in October 1997. A secondary launch opportunity occurs in December 1997, with a backup opportunity in March 1999, both using the Titan IV(SRMU)/Centaur. The primary launch opportunity would employ a Venus-Venus-Earth-Jupiter-Gravity-Assist trajectory to Saturn; the secondary and backup opportunities would both employ a Venus-Earth-Earth-Gravity-Assist (VEEGA) trajectory. The Proposed Action would allow the Cassini spacecraft to gather the full science return desired to accomplish mission objectives.

Along with the No-Action alternative (ceasing preparations and not implementing the Cassini mission), the FEIS evaluated in detail two other mission alternatives. The March 1999 alternative would have used two Shuttle flights with on-orbit integration of the spacecraft and upper stage, followed by injection of the spacecraft into a VEEGA trajectory to Saturn. Due to the long lead-time in developing and certifying the new upper stage that would be needed to implement it, this alternative is no longer considered reasonable. Also, this alternative would have returned less science than the primary launch opportunity of the Proposed Action. The other mission alternative considered in the FEIS was the 2001 alternative, which would use a Titan IV(SRMU)/Centaur to launch the spacecraft from CCAS in March 2001 on a Venus-Venus-Venus-Gravity-Assist trajectory. A backup opportunity in May 2002 would use a VEEGA trajectory. The 2001 alternative would require completing development and testing of a new high-performance rhenium engine for the spacecraft, as well as adding about 20 percent more propellant to the spacecraft. Science returns from this alternative would meet the minimum acceptable level for the mission.

The FEIS analyses demonstrated that completing preparations for and implementing a normal Cassini mission would not significantly impact the human environment. The principal concern associated with all mission alternatives (except No-Action) was with accidents during launch and operation of the mission that have the potential to result in a release of plutonium dioxide from the RTG's and/or RHU's onboard the spacecraft. In response, NASA and the U.S. Department of Energy (DOE), using the best information available at that time, developed an array of representative accident scenarios that could potentially result in a release of plutonium dioxide from the RTG's. NASA and DOE analyzed the representative accident scenarios with respect to the consequences and risks. The results of those analyses were presented in the Cassini FEIS.

Updated results from the continuing tests and analysis have recently become available for NASA review. This updated data indicates that there is new information relevant to environmental concerns and bearing on the impacts of the Proposed Action. NASA has determined that the purposes of NEPA will be furthered by preparation and issuance of an SEIS.

The SEIS will address NASA's consideration of the updated data resulting from the ongoing analysis. The SEIS will compare the updated data with those in the FEIS and will focus on the areas where the largest differences in risk are estimated. The SEIS will address the Proposed Action, the No Action alternative, and the 2001 mission alternative which is still available to NASA.

Benita A. Cooper,

Associate Administrator for Management Systems and Facilities.

[FR Doc. 97–5735 Filed 3–7–97; 8:45 am]

BILLING CODE 7510–01–M

[Notice (97–027)]

NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee, Microgravity Science and Applications Advisory Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting cancellation.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 62 FR 7072, Notice Number 97–014, February 14, 1997.

PREVIOUSLY ANNOUNCED DATES OF MEETING: March 5, 1997, 10:00 a.m. to 5:00 p.m. Meeting has been canceled.

CONTACT PERSON FOR MORE INFORMATION: Dr. Bradley M. Carpenter, Code UG, National Aeronautics and Space Administration, Washington, DC 20546, 202–358–0813.

Dated: March 4, 1997.

Leslie M. Nolan,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 97–5854 Filed 3–5–97; 1:16 pm]

BILLING CODE 7510–01–M

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meeting; Notice of Change in Subject of Meeting

The National Credit Union Administration Board determined that its business requires the deletion of the following item from the previously announced open meeting (Federal Register, 62 FR 10086, March 5, 1997) scheduled for 8:10 a.m., Friday, March 7, 1997.

3. Charter Application from the Proposed First Combined Community Federal Credit Union.

The Board voted (2-to-0, Vice Chairman Bowné was unavailable) that Agency business required that this item be deleted from the open agenda. Earlier announcement of this change was not possible.

The previously announced items were:

1. Approval of Minutes of Previous Open Meeting.

2. Requests from Federal Credit Unions to Convert to a Community Charter.

3. Charter Application from the Proposed First Combined Community Federal Credit Union.

4. Request from a Corporate Federal Credit Union for a Field of Membership amendment.

5. Final Rule: Part 704, NCUA's Rules and Regulations, Corporate Credit Unions.

6. Proposed Rule: Request for Comments on Federal Credit Union Bylaws.

7. Advance Notice of Proposed Rulemaking: Request for Comments on Interpretive Rulings and Policy Statements (IRPS).

8. Proposed Rule: Amendments to Sections 701.26(b), 701.27, and 740.3(c), and addition of Part 712, NCUA's Rules and Regulations, Credit Union Service Contracts, Credit Union Service Organizations, and Advertising.

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 97–5922 Filed 3–5–97; 4:21 pm]

BILLING CODE 7535–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meetings:

Name and Committee Code: Special Emphasis Panel in Materials Research #1203.

Date & Time: March 26, 1997; 8:30 a.m.–5:00 p.m.

Place: National Science Foundation, Room 360, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Carmen Huber, Program Director, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone (703) 306–1996.

Purpose of Meeting: To provide advice and recommendations concerning support for proposals focusing on integration of research and education in materials.

Agenda: Presentations and evaluation of progress.

Reason for Closing: The activity being evaluated may include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b.(c) (4) and (6) of the Government in the Sunshine Act.

Dated: March 5, 1997.

Linda Allen-Benton,

Deputy Director, Division of Human Resource Management, Acting Committee Management Officer.

[FR Doc. 97–5861 Filed 3–7–97; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Networking & Communications Research & Infrastructure; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis for Connections to the Internet Panel (#1207).

Date and Time: March 24–25, 1997; 2:00 p.m. to 4:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 1175, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person(s): Mark Luker, Program Director, CISE/NCRI, Room 1175, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1950.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review & evaluate proposals submitted for the Connections to the Internet Program.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b.(c) (4) and (6) of the Government in the Sunshine Act.

Dated: March 5, 1997.

Linda Allen-Benton,

Deputy Director, Division of Human Resource Management, Acting Committee Management Officer.

[FR Doc. 97–5860 Filed 3–7–97; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–267]

Notice of Receipt of the Public Service Company of Colorado Decommissioning/Termination Plan for the Fort St. Vrain Nuclear Generating Station

AGENCY: Nuclear Regulatory Commission.

SUMMARY: The U.S. Nuclear Regulatory Commission is noticing the receipt and reapproval of the Public Service Company's (PSC) of Colorado Decommissioning Plan (DP) as the Termination Plan for the Fort St. Vrain (FSV) Nuclear Generating Station, located near Platteville, Colorado.

BACKGROUND: NRC initially published a Notice of Consideration of Issuance of Orders to Authorize Decommissioning and Termination of Possession-Only License in the Federal Register on March 13, 1992 (57 FR 8940) and no comments or requests for hearing were received. On November 23, 1992, NRC issued Amendment No. 85, to License No. DPR–34, which incorporated the DP into the license, and issued an Order Approving the DP and Authorizing Decommissioning. In addition, on November 12, 1996, NRC published in the Federal Register (61 FR 58087) a Notice of a Public Meeting with the PSC to discuss the decommissioning and license termination of the FSV. The Public Meeting was held on December 3, 1996, in the vicinity of the plant, and no comments or requests for a hearing were received.

ACTION: In accordance with NRC's revised decommissioning regulations, specifically 10 CFR 50.82(a)(9)(iii), and based upon the comprehensive nature of DP, as amended, NRC is accepting the approved DP as the licensee's Termination Plan, and noticing the receipt of the FSV DP and its availability for public comment. Pursuant to a request by the licensee, an amendment is being considered to the license redesignating the FSV DP as the Termination Plan, as now required by NRC's regulations, and approving the Termination Plan. See 10 CFR 50.82(a)(10).

HEARING: The scope of 10 CFR Part 2, Subpart L, ''Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings,'' includes a hearing on power reactor decommissioning license amendments subsequent to permanent removal of the fuel from the reactor. Accordingly, pursuant to 10 CFR 2.1205(a), any person whose interest may be affected by this proceeding, may request a hearing in accordance with 10 CFR 2.1205(d). A request for a hearing must be filed within thirty (30) days of the date of publication of this Federal Register notice.

In accordance with 10 CFR 2.1205(e), a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requester in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requester

should be permitted a hearing, with particular reference to the factors set out in 10 CFR 2.1205(h);

(3) The requester's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with 10 CFR 2.1205(d).

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

(1) The applicant, Public Service Company of Colorado, 16805 WCR 19 ½, Platteville, Colorado, Attention: Mr. A. Clegg Crawford, Vice President, Engineering and Operations Support, and

(2) NRC staff, by delivery to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Attention: Docketing and Service Branch; or hand-deliver comments to: 11555 Rockville Pike, Rockville, MD between 7:45 a.m. and 4:15 p.m., Federal workdays.

If no request for a Subpart L hearing is received, the license will be amended to approve the Termination Plan, after the thirty (30) day period for requesting a hearing has expired. Thereafter, once the determinations required under 10 CFR 50.82(a)(11) have been made, NRC will terminate the license without further opportunity for hearing.

A copy of the DP is available for public inspection and copying at NRC's Public Document Room, 2120 L Street, NW., Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Mr. Clayton L. Pittiglio, Project Manager, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T–7–F27, Washington, DC 20555–0001. Telephone (301) 415–6702.

Dated at Rockville, MD this 4th day of March 1997.

For the U.S. Nuclear Regulatory Commission.

John W.N. Hickey,

Chief.

[FR Doc. 97–5853 Filed 3–7–97; 8:45 am]

BILLING CODE 7590–01–P

Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Thermal Hydraulic Phenomena

The ACRS Subcommittee on Thermal Hydraulic Phenomena will hold a meeting on March 28, 1997, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

Most of the meeting will be closed to public attendance to discuss Westinghouse Electric Corporation proprietary information pursuant to 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

Friday, March 28, 1997—8:30 a.m. Until the Conclusion of Business

The Subcommittee will continue its review of the Westinghouse (W) Test and Analysis Program being conducted in support of the AP600 design certification, especially the *W* approach for modeling long-term cooling accident scenarios using the *W* COBRA/TRAC code. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, the Westinghouse Electric Corporation, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the scheduling of sessions which are open to the public, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Paul A. Boehnert (telephone 301/415–8065) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: March 4, 1997.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 97–5851 Filed 3–7–97; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–255, 50–266/301, 50–313/368, 72–5, 72–7, 72–13]

Consumers Power Company, Palisades Nuclear Plant, Wisconsin Electric Power Company, Point Beach Nuclear Plant, Units 1 and 2, Entergy Operations, Inc., Arkansas Nuclear One, Units 1 and 2; Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has issued a Director's Decision concerning a Petition dated November 17, 1995, filed Ms. Fawn Shillinglaw (Petitioner) under Section 2.206 of Title 10 of the Code of Federal Regulations (10 CFR 2.206). The Petition requested that the NRC prohibit loading of spent nuclear fuel into VSC–24 dry storage casks at any nuclear site until the multi-assembly sealed basket (MSB) #4 at the Palisades Nuclear Plant is unloaded and the unloading process is evaluated.

The Director of the Office of Nuclear Reactor Regulation has determined that Petition should be denied for the reasons stated in the ''Director's Decision Under 10 CFR 2.206'' (DD–97–05), the complete text of which follows this notice. The decision and documents cited in the decision are available for public inspection and copying in the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC.

A copy of this decision has been filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c). As provided therein, this decision will become the final action of the Commission 25 days after issuance unless the Commission, on its own motion, institutes review of the decision within that time.

Dated at Rockville, Maryland, this 4th day of March 1997.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

DIRECTOR'S DECISION UNDER 10 CFR 2.206

I. Introduction

On November 17, 1995, Ms. Fawn Shillinglaw (Petitioner) filed a Petition pursuant to Section 2.206 of Title 10 of

the Code of Federal Regulations (10 CFR 2.206) requesting that the U.S. Nuclear Regulatory Commission (NRC) take action to prohibit loading of VSC–24 casks at any nuclear site until the multi-assembly sealed basket (MSB) #4 at the Palisades plant has been unloaded and the experience evaluated for potential safety improvements. In addition to Consumers Power Company, the licensee for Palisades, other licensees that use the VSC–24 cask system are Wisconsin Electric Power Company at its Point Beach Nuclear Plant, Units 1 and 2, and Entergy Operations, Inc., at Arkansas Nuclear One, Units 1 and 2.

The Petition has been referred to me pursuant to 10 CFR 2.206. The NRC letter to you dated January 18, 1996, acknowledged receipt of the Petition. Notice of receipt was published in the Federal Register on January 25, 1996 (61 FR 2269).

On the basis of the NRC staff's evaluation of the issues and for the reasons given below, the Petitioner's request is denied.

II. Background

NRC regulations contain a general license that authorizes nuclear power plants licensed by the NRC to store spent nuclear fuel at the reactor site in storage casks approved by the NRC. (See 10 CFR Part 72, Subpart K.) In regard to dry cask storage of spent nuclear fuel at Palisades, Point Beach, and Arkansas Nuclear One, the licensees opted to use the VSC–24 Cask Storage System designed by Sierra Nuclear Corporation. The VSC–24 Cask Storage System was added to the list of NRC certified casks in May 1993 (58 FR 17948). The associated certificate of compliance, Certificate Number 1007, specifies the conditions for use of VSC–24 casks under the general license provisions of 10 CFR Part 72. Section 1.1.2, ''Operating Procedures,'' in the certificate of compliance for the VSC–24 casks requires that licensees prepare an operating procedure related to cask unloading. Specifically, the condition states—

> Written operating procedures shall be prepared for cask handling, loading, movement, surveillance, and maintenance. The operating procedures suggested generically in the SAR [safety analysis report] are considered appropriate, as discussed in Section 11.0 of the SER [safety evaluation report], and should provide the basis for the user's written operating procedures. The following additional written procedures shall also be developed as part of the user operating procedures:
>
> 1. A procedure shall be developed for cask unloading, assuming damaged fuel. If fuel needs to be removed from the multi-assembly sealed basket (MSB), either at the end of service life or for inspection after an accident, precautions must be taken against the potential for the presence of oxidized fuel and to prevent radiological exposure to personnel during this operation. This activity can be achieved by the use of the Swagelok valves, which permit a determination of the atmosphere within the MSB before the removal of the structural and shield lids. If the atmosphere within the MSB is helium, then operations should proceed normally, with fuel removal, either via the transfer cask or in the pool. However, if air is present within the MSB, then appropriate filters should be in place to permit the flushing of any potential airborne radioactive particulate from the MSB, via the Swagelok valves. This action will protect both personnel and the operations area from potential contamination. For the accident case, personnel protection in the form of respirators or supplied air should be considered in accordance with the licensee's Radiation Protection Program.

In July 1994, the licensee for Palisades discovered radiographic indications of possible defects in a weld in MSB #4. MSB #4 had been loaded with spent fuel earlier that month and placed inside a ventilated concrete cask on the independent spent fuel storage installation (ISFSI) storage pad. The licensee evaluated the flaw indications and determined that the MSB continued to meet its design basis and was capable of safely storing spent fuel for the duration of the certificate (20 years). Nevertheless, the licensee stated that MSB #4 would be unloaded to support additional inspections and evaluations related to its future use.[1] In preparation for the unloading of MSB #4, the licensee reviewed the unloading procedure issued in May 1993 (Revision 0) and identified several technical deficiencies. A revision of the unloading procedure (Revision 1) was subsequently developed to resolve the identified technical deficiencies. The revised unloading procedure is the subject of an ongoing NRC inspection.[2]

Through inspections at Palisades and other facilities, the NRC staff identified a number of concerns regarding licensees' procedures for unloading spent fuel from dry storage casks. The NRC staff identified examples of procedural inadequacies and quality assurance shortcomings experienced during preoperational tests and actual cask loading operations at several facilities. In addition, the staff observed that some unloading procedures implemented by licensees neglected to consider contingencies and assumptions on possible fuel degradation, gas sampling techniques, cask design issues, radiation protection requirements, and the thermal-hydraulic behavior of a cask during the process of cooling and filling it with water from the spent fuel pool. To address these concerns, the following item titled ''Cask Loading and Unloading,'' was included in the NRC dry cask storage action plan implemented in July 1995.[3]

> Issue: Cask Loading and Unloading
>
> As licensees have implemented their ISFSI plans, several issues have been identified related to the loading and unloading of casks. Loading issues have centered on procedural inadequacies and quality assurance shortcomings. The unloading procedures developed by licensees tend to be simplistic. This has resulted in neglecting to consider contingencies and assumptions on failed fuel, air sampling techniques, disassembly requirements, design problems, and radiation protection requirements. The importance of these procedures should be emphasized to licensees, and technical issues related to unloading problems resolved. This issue should also be addressed for shipping casks.

The NRC action plan developed for dry cask storage was formulated to manage the resolution of a variety of technical and process issues associated with the expanding use of that technology for the storage of spent nuclear fuel. The item related to the loading and unloading of dry storage casks was added to the action plan, in part, to ensure that the importance of the unloading procedures was emphasized to licensees and technical issues related to unloading problems were resolved.

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[1] The unloading of MSB #4 was originally planned for several months after the discovery of the radiographic indications of possible weld defects in July 1994. However, the unloading has been delayed several times and in its letter of January 17, 1997, the licensee informed the NRC staff that the unloading has been postponed until the fuel in MSB #4 can be reloaded into a certified storage and transportation cask. The licensee also indicated it intends to pursue development and licensing of such a cask, has solicited and received bids from vendors, and plans to award a contract before the end of the first quarter of 1997.

[2] In regard to the original (Revision 0) unloading procedure at Palisades, the NRC staff concluded that, had the licensee attempted to unload a cask using the original unloading procedure, the licensee would have needed to suspend activities at one or more times during the unloading process in order to implement revisions to the procedure. The NRC staff found that this was a violation of requirements that all activities affecting quality be prescribed by procedures appropriate for the circumstances and that procedures are reviewed for adequacy. However, given the limited safety significance of the procedural deficiencies and the fact that the licensee identified and corrected the deficiencies, the NRC dispositioned the violation as a Non-Cited Violation in accordance with the NRC Enforcement Policy. (See NRC Inspection Report 50–255/96014 and Director's Decision 97–01.)

[3] Action plans are used by the NRC staff to manage the resolution of significant generic issues. Such plans are prepared when the anticipated resources that will be required to resolve generic or potentially generic issues exceed certain thresholds or when the NRC staff determines that an action plan would improve its efficiency and effectiveness.

To implement the plan, the NRC staff formed a working group to identify issues associated with loading and unloading processes for dry storage casks and to propose means of informing the industry and the NRC staff of those issues. The working group considered industry experiences, concerns identified during reviews and inspections, and other issues related to loading and unloading procedures. The working group completed its reviews in April 1996. The concerns related to unloading procedures reviewed by the working group were found to involve either (1) isolated occurrences that had been adequately resolved by site-specific corrective actions or (2) generic issues which were addressed by incorporating remedial measures into ongoing staff activities, such as the preparation of revised inspection procedures or other guidance documents.

In May 1996, an event occurred at the Point Beach plant involving the ignition of hydrogen gas during the loading of a VSC–24 cask.[4] Completion of the NRC inspection of the revised unloading procedure for Palisades was postponed following the event at Point Beach in order to allow licensees and the NRC staff to identify the cause of the hydrogen ignition and implement appropriate corrective actions. Following the event, the NRC issued confirmatory action letters (CALs) to those licensees using or planning to use VSC–24 casks for the storage of spent nuclear fuel (i.e., licensees for Point Beach, Palisades, and Arkansas Nuclear One). The CALs documented the licensees' commitments not to load or unload a VSC–24 cask without resolution of material compatibility issues identified in NRC Bulletin 96–04, ''Chemical, Galvanic, or Other Reactions in Spent Fuel Storage and Transportation Casks,'' and subsequent confirmation of corrective actions by the NRC.

On December 3, 1996, the NRC staff informed the licensee for Arkansas Nuclear One that it had completed its reviews and inspections associated with that facility and found that the licensee had satisfactorily completed the commitments documented in the CAL. Shortly thereafter, the licensee initiated cask-loading activities. The review of responses to the bulletin related to Palisades and Point Beach is ongoing and cask operations at those facilities continue to be limited by the licensees' commitments described in CALs.

III. Discussion

In support of the Petitioner's request that VSC–24 casks not be loaded until MSB #4 at Palisades has been unloaded and the unloading process has been evaluated, the Petitioner cites the action plan prepared by the NRC staff that included the staff's observation that some unloading procedures developed by licensees tended to be simplistic. The Petitioner asserts that because problems are discovered through experience, the proper way to unload casks will not be known until a cask is actually unloaded. The Petitioner also claims that the unloading procedures should not be left to the licensees to develop and implement but should be the subject of detailed NRC evaluations.

The NRC staff's concerns about the quality of licensees' unloading procedures led it to include the issue in the dry cask storage action plan. The action plan provided a framework for the identification and resolution of various technical and administrative issues related to the use of dry storage casks. The previously mentioned actions taken by the NRC staff and licensees adequately resolved the identified issues pertaining to cask unloading procedures. In the specific case of the unloading procedure at Palisades, the licensee's revised procedure addressed many of the generic staff activities on cask unloading and is currently the subject of a thorough NRC inspection that will be completed in the near future.

To fulfill some of the goals included in the action plan, the NRC staff has emphasized the importance of unloading procedures and shared observations with licensees using or considering dry cask storage during opportunities such as the Spent Fuel Storage and Transportation Workshop held in May 1996 and meetings with individual licensees. On the basis that these discussions with the industry and other staff actions had conveyed important operating experiences to NRC licensees, the staff deferred issuance of an NRC information notice on the subject of loading and unloading of dry storage casks. The staff revised inspection procedures to specifically instruct NRC inspectors to review unloading procedures developed by licensees and to identify those issues that warrant particular attention. Guidance included in NRC Inspection Procedure 60855, ''Operation of an ISFSI,'' issued February 1, 1996, states—

For unloading activities, attention should be paid to how the licensee has prepared to deal with the potential hazards associated with that task. Some potential issues may include: The radiation exposure associated with drawing and analyzing a sample of the canister's potentially radioactive atmosphere; steam flashing and pressure control as water is added to the hot canister; and filtering or scrubbing the hot steam/gas mixture vented from the canister, as it is filled with water.

Similar guidance was included in NUREG–1536, ''Standard Review Plan for Dry Cask Storage Systems, Draft Report for Comment,'' issued in February 1996 and will be included in the final version of the standard review plan that is currently being prepared. The revised guidance documents ensure that recent and future reviews will address the adequacy of unloading procedures developed by licensees.

The NRC staff also reviewed the inspection history for existing ISFSIs to determine if unloading procedures were reviewed with due consideration given to the potential complications that may arise during the unloading process. The NRC staff performed audits or inspections of those licensee programs for which the inspection record did not document whether the unloading procedures adequately addressed the major issues included in the action plan. In regard to the users of the VSC–24 cask system, inspections of unloading procedures at Arkansas Nuclear One (NRC Inspection Report 50–313/96–16; 50–368/96–16; 72–13/96–01 and Notice of Violation, dated July 31, 1996) and Point Beach (NRC Inspection Report 50–266/95011; 50–301/95011, dated November 15, 1995) considered the concerns included in the NRC action plan.

As previously mentioned, the revised unloading procedure at Palisades is the subject of an ongoing inspection, completion of which was delayed as a result of the hydrogen ignition event at Point Beach. The NRC inspection of the revised unloading procedure at Palisades is being coordinated with the staff's review of the licensee's response to NRC Bulletin 96–04 and is expected to be completed in the near future, notwithstanding the licensee's decision to postpone unloading MSB #4 pending the availability of a certified storage and transportation cask.[5] Further, the NRC has committed to State officials and members of the public that the exit meeting for the inspection of the revised unloading procedure at Palisades will be open to the public, the meeting will be noticed sufficiently in advance to

[4] On May 28, 1996, a hydrogen gas ignition occurred during the welding of the shield lid on a VSC–24 cask at the Point Beach Nuclear Plant. The hydrogen was formed by a chemical reaction between a zinc-based coating (Carbo Zinc 11) and the borated water in the spent fuel pool.

[5] The licensee for Palisades responded to NRC Bulletin 96–04 by letters dated August 19 and November 12, 1996. The NRC staff is awaiting the licensee's response to a request for information that was issued on February 12, 1997.

allow interested parties to attend, and the NRC staff will allocate time to discuss issues with the public following the meeting with the licensee.

The NRC staff agrees with the Petitioner that learning from experience is an essential part of improving the safety of nuclear power plant activities, including those associated with dry cask storage of spent nuclear fuel. This principle is reflected in the regulatory requirements pertaining to preoperational testing of dry cask storage activities, as well as various provisions of NRC-approved quality assurance programs. The issuance of Bulletin 96–04 and the CALs for licensees using VSC–24 casks is another example of the NRC staff's efforts to ensure that applicable operating experience is incorporated into procedures at facilities licensed by the NRC. In this case, the licensees using the VSC–24 cask revised procedures to address the technical concerns identified after the event at Point Beach and agreed to defer cask operations pending the NRC's review of responses to the bulletin and confirmation of corrective actions.

As previously mentioned, the licensee for Arkansas Nuclear One loaded VSC–24 casks following the NRC staff's determination that the licensee had satisfactorily completed the commitments documented in the CAL. On the basis of reviews and inspections performed to verify corrective actions associated with the bulletin, in combination with reviews performed for cask certification and previous inspections of preoperational testing and other aspects of the licensee's dry cask storage program, the NRC staff determined that the licensee for Arkansas Nuclear One could perform either cask loading or unloading operations without undue risk to the health and safety of the public or its own personnel. The NRC staff, through reviews and inspections to verify corrective actions associated with NRC Bulletin 96–04, must have confidence in the procedures implemented by the licensee for Point Beach before the NRC permits that licensee to resume loading or unloading of VSC–24 casks. The staff must also obtain the necessary confidence that the licensee for Palisades has implemented the corrective actions related to NRC Bulletin 96–04 as well as the issues included in the NRC action plan before permitting the licensee to resume loading or unloading VSC–24 casks.

Thus, only after resolution of the issues identified in NRC Bulletin 96–04 and other questions that may arise during the inspections of the licensees' revised procedures at Point Beach and Palisades, will the NRC permit them to unload casks. As part of its review, the NRC staff will consider matters such as the dry-run exercises licensees performed to verify key aspects of unloading procedures, as well as licensees' actual experience in the loading and unloading of transportation casks, loading of storage casks, handling of spent fuel assemblies under various conditions, and performing relevant maintenance and engineering activities associated with reactor facilities. Given that the NRC staff will not permit unloading of any casks unless it obtains reasonable assurance of each licensee's ability to do so safely, the NRC does not have reason to require unloading of MSB #4 at Palisades before allowing resumption of normal activities under the general licenses at Arkansas Nuclear One, Point Beach, or Palisades.

The Petitioner's request is, therefore, denied.

IV. Conclusion

The Petitioner requested that the NRC prohibit loading of VSC–24 casks at any nuclear site until MSB #4 at the Palisades plant has been unloaded and the experience evaluated for potential safety concerns. Each of the claims by the Petitioner has been reviewed. I conclude that, for the reasons discussed above, no adequate basis exists for granting Petitioner's request for suspension of the licensees' use of the general licenses for dry cask storage of spent nuclear fuel at Palisades, Point Beach, or Arkansas Nuclear One until the MSB at Palisades has been unloaded and the experience evaluated for potential safety improvements.

A copy of this decision will be filed with the Secretary of the Commission for the Commission to review in accordance with 10 CFR 2.206(c).

As provided by this regulation, this decision will constitute the final action of the Commission 25 days after issuance, unless the Commission, on its own motion, institutes a review of the decision within that time.

Dated at Rockville, Maryland, this 4th day of March 1997.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 97–5852 Filed 3–7–97; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

The National Partnership Council; Meeting

AGENCY: Office of Personnel Management.

ACTION: Notice of meeting.

TIME AND DATE: 9:30 a.m., March 21, 1997.

PLACE: Sheraton Premiere Hotel at Tyson's Corner, 8661 Leesburg Pike, Vienna, Virginia 22182.

STATUS: This meeting will be open to the public. Seating will be available on a first-come, first-served basis. Individuals with special access needs wishing to attend should contact OPM at the number shown below to obtain appropriate accommodations.

MATTERS TO BE CONSIDERED: The National Partnership Council (NPC) will receive a briefing on the Blair House Papers, President Clinton's plan for reinvention. Also, there will be a follow-up presentation on the NPC Facilitation Project plan for working with labor-management partnerships that are facing difficulties, and a presentation by the Federal Managers Association.

CONTACT PERSON FOR MORE INFORMATION: Michael Cushing, Director, Center for Partnership and Labor-Management Relations, Office of Personnel Management, Theodore Roosevelt Building, 1900 E Street, NW., Room 7H28, Washington, DC 20415–0001, (202) 606–0010.

SUPPLEMENTARY INFORMATION: The date and location of the Council's March meeting was chosen to coincide with the Federal Managers Association's (FMA) 59th annual national convention, which meets March 20–26, 1997 at the Sheraton Premiere Hotel at Tyson's Corner in Vienna, Virginia. The Council's meeting is scheduled to take place at the start of FMA's convention.

PUBLIC PARTICIPATION: We invite interested persons and organizations to submit written comments. Mail or deliver your comments to Michael Cushing at the address shown above. To be considered at the March 21 meeting, written comments should be received by March 17.

Office of Personnel Management.

James B. King,

Director.

[FR Doc. 97–5834 Filed 3–7–97; 8:45 am]

BILLING CODE 6325–01–M

POSTAL RATE COMMISSION

[Docket No. A97–13]

In the Matter of: Stanley, Iowa 50671 (Steve Falck, Petitioner); Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

Issued March 5, 1997.

Before Commissioners: Edward J. Gleiman, Chairman; H. Edward Quick, Jr., Vice-Chairman; George W. Haley; W.H. ''Trey'' LeBlanc III

Docket Number: A97–13.

Name of Affected Post Office: Stanley, Iowa 50671.

Name(s) of Petitioner(s): Steve Falck.

Type of Determination: Consolidation.

Date of Filing of Appeal Papers: March 3, 1997.

Categories of Issues Apparently Raised:

1. Effect on the community [39 U.S.C. 404(b)(2)(A)].

2. Effect on postal services [39 U.S.C. 404(b)(2)(C)].

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues.

The Postal Reorganization Act requires that the Commission issue its decision within 120 days from the date this appeal was filed (39 U.S.C. 404 (b)(5)). In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service to submit memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request and the Postal Service shall serve a copy of its memoranda on the petitioners. The Postal Service may incorporate by reference in its briefs or motions, any arguments presented in memoranda it previously filed in this docket. If necessary, the Commission also may ask petitioners or the Postal Service for more information.

The Commission orders:

(a) The Postal Service shall file the record in this appeal by March 18, 1997.

(b) The Secretary of the Postal Rate Commission shall publish this Notice and Order and Procedural Schedule in the Federal Register.

By the Commission.

Margaret P. Crenshaw,

Secretary.

Appendix

March 3, 1997—Filing of Appeal letter

March 5, 1997—Commission Notice and Order of Filing of Appeal

March 28, 1997—Last day of filing of petitions to intervene [see 39 C.F.R. 3001.111(b)]

April 7, 1997—Petitioner's Participant Statement or Initial Brief [see 39 C.F.R. 3001.115 (a) and (b)]

April 28, 1997—Postal Service's Answering Brief [see 39 C.F.R. 3001.115(c)]

May 13, 1997—Petitioner's Reply Brief should Petitioner choose to file one [see 39 C.F.R. 3001.115(d)]

May 20, 1997—Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [see 39 C.F.R. 3001.116]

July 1, 1997—Expiration of the Commission's 120-day decisional schedule [see 39 U.S.C. 404(b)(5)]

[FR Doc. 97–5833 Filed 3–7–97; 8:45 am]

BILLING CODE 7710–FW–P

PRESIDENT'S COMMISSION ON CRITICAL INFRASTRUCTURE PROTECTION

Public Meeting

ACTION: Los Angeles PCCIP *Public Meeting.*

TIME & DATE: 10:00 am–1:00 pm, Thursday, March 13, 1997.

PLACE: Public Works Hearing Room, City Hall, Room 350, 3rd Floor, 200 N. Spring Street, Los Angeles CA 90012.

MATTERS TO BE CONSIDERED: Any concerned citizen, group or activity with advice/comments on assuring America's critical infrastructures.

CONTACT PERSON FOR MORE INFORMATION: Nelson McCouch, Public Affairs Director, (703) 696–9395, nelson.mccouch@pccip.gov.

Robert E. Giovagnoni,

General Counsel, President's Commission on Critical Infrastructure Protection.

[FR Doc. 97–5743 Filed 3–7–97; 8:45 am]

BILLING CODE 3110–$$–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Rel. No. 22539; 811–5779]

New World Investment Fund; Notice of Application

March 4, 1997.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (''Act'').

APPLICANT: New World Investment Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATES: The application was filed on October 29, 1996, and amended on February 7, 1997.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 31, 1997, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC 450 Fifth Street, NW., Washington, DC 20549. Applicant, 11100 Santa Monica Boulevard, Los Angeles, California, 90025.

FOR FURTHER INFORMATION CONTACT: Courtney S. Thornton, Senior Counsel, at (202) 942–0583, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, a Massachusetts business trust, is a closed-end management investment company. Applicant filed a notification of registration on Form N–8A under section 8(a) of the Act on March 1, 1989, and filed a registration statement on Form N–2 under section 8(b) of the Act on March 28, 1989.

2. Applicant filed a registration statement on Form N–2 under the Securities Act of 1933 with respect to 3,458,684 shares of beneficial interest on September 25, 1992. On March 8, 1993, applicant filed a pre-effective amendment with respect to an additional 447,543 shares of beneficial

interest. The registration statement was declared effective on June 4, 1993, and applicant commenced the initial public offering of its securities immediately thereafter. On March 15, 1995, applicant filed a registration statement on Form N–2 with respect to an additional 595,821 shares of beneficial interest, and filed a pre-effective amendment with respect to 3,167,380 shares of beneficial interest on September 26, 1995. This registration statement was declared effective on November 28, 1995.

3. On February 16, 1996, applicant's board of trustees (''Trustees'') approved by unanimous written consent an agreement and plan of reorganization (''Plan''), providing for the transfer of all of applicant's assets in exchange for shares of common stock of Emerging Markets Growth Fund, Inc. (''Acquiring Fund''), a closed-end investment company. In approving the Plan, the Trustees considered: (a) The potential benefits of the Plan to applicant's shareholders, (b) the compatibility of investment objectives, policies, restrictions and investment holdings of applicant and the Acquiring Fund, (c) the terms and conditions of the Plan that might affect the price of applicant's outstanding shares, and (d) the direct or indirect costs to be incurred by applicant or its shareholders. The Trustees concluded that participation in the Plan was in the best interests of applicant and its shareholders.

4. Applicant and the Acquiring Fund may be deemed affiliated persons of each other within the meaning of the Act because they have two common shareholders, each of whom owned more than 5% of the outstanding shares of applicant and the Acquiring Fund. Because applicant and Acquiring Fund were unable to rely on the exemption provided in rule 17a–8,[1] applicant, the Acquiring Fund, and two affiliated shareholders of both funds received an order under section 17(b) of the Act granting an exemption from section 17(a), which permitted the Acquiring Fund to acquire all of applicant's assets.[2]

5. On May 31, 1996, an information statement/prospectus was mailed to all shareholders of record as of April 30, 1996. This information statement contained a consent solicitation requesting the vote of each shareholder on the approval of the Plan, the distribution of such shares to applicant's shareholders in liquidation of applicant, and applicant's subsequent dissolution. A registration statement on Form N–14 containing the information statement/prospectus was filed with the Commission on April 24, 1996. Approval of the Plan required the written consent of a majority of the shares outstanding and entitled to vote; holders of 12,205,648 shares (100% of the outstanding shares) provided their written consent to the Plan.

6. As of June 21, 1996, applicant had 12,663,070 shares outstanding with a net asset value of $22.03 and an aggregate net asset value of $278,920,093.23. To effect the liquidation of applicant, an open account was established on the share records of the Acquiring Fund in the name of each of applicant's shareholders representing the number of shares of common stock of the Acquiring Fund with a net asset value equal to the net asset value of applicant's shares owned of record by the shareholder as of June 21, 1996. The number of Acquiring Fund shares issued (including fractional shares) in exchange for applicant's assets was determined by dividing the value of applicant's net assets by the per share not asset value of the Acquiring Fund on that date.

7. Expenses incurred in connection with the Plan, including fees for legal and accounting services, amounted to $160,226.77. Under the Plan, applicant and the Acquiring Fund were each responsible for one half of the costs incurred.

8. At the time of the application, applicant had no shareholders, assets, or liabilities, nor was applicant a party to any litigation or administrative proceeding. Applicant is not engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

9. Upon issuance of the order requested, applicant will file a termination of trust with the Massachusetts Secretary of State, deregistering applicant as a Massachusetts business trust.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–5836 Filed 3–7–97; 8:45 am]

BILLING CODE 8010–01–M

[1] Rule 17a–8 provides relief from the affiliated transaction prohibition of section 17(a) of the Act for a merger of investment companies that may be affiliated persons of each other solely by reason of having a common investment adviser, common directors, and/or common officers.

[2] Investment Company Act Release Nos. 21952 (May 10, 1996) (notice) and 22006 (June 5, 1996) (order).

[Rel. No. IC–22538; 811–6410]

Strong Insured Municipal Bond Fund, Inc.; Notice of Application

March 4, 1997.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption Under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Strong Insured Municipal Bond Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATES: The application was filed on November 20, 1996 and amended on February 25, 1997.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 31, 1997, and should be accompanied by proof of service on applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, DC 20549. Applicant, 100 Heritage Reserve, Menomonee Falls, Wisconsin 53051.

FOR FURTHER INFORMATION CONTACT: Suzanne Krudys, Senior Counsel, at (202) 942–0641, or Mercer E. Bullard, Branch Chief, (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, a registered open-end investment company, was organized as a Wisconsin corporation on December 12, 1990. On September 13, 1991, applicant registered under the Act and filed a registration statement under section 8(b) of the Act and the Securities Act of 1933. The registration statement was declared effective on November 25, 1991 and applicant's initial public offering commenced that same day.

Applicant initially registered under the name Strong B Fund, Inc. and changed its name to Strong Insured Municipal Bond Fund, Inc. on November 4, 1991.

2. At a meeting held on April 24, 1996, the board of directors of applicant unanimously approved the Agreement and Plan of Reorganization (''Reorganization Agreement'') whereby applicant would exchange its assets for shares of Strong Municipal Bond Fund, Inc. (''Bond Fund''). The Reorganization Agreement provided: (i) for the transfer of all of applicant's assets to the Bond Fund less a reserve for liabilities in exchange for shares of Bond fund (''Bond Fund Shares'') equal in value to applicant's net assets; (ii) the pro rata distribution of the Bond Fund Shares to applicant's shareholders in liquidation of applicant; (iii) the cancellation of applicant's shares; and (iv) deregistration of applicant as an investment company under the Act.

3. At the April 24 meeting, applicant's directors, (i) in reliance on rule 17a–8 under the Act,[1] found that participation in the reorganization was in the best interest of applicant and its shareholders and that the interests of applicant's shareholders would not be diluted as a result of the reorganization, (ii) authorized the preparation and filing of proxy solicitations, and (iii) called a shareholders meeting. In making its determination that the reorganization was in the best interest of applicant's shareholders, the board noted that the relatively small size of applicant had prevented it from realizing significant economies of scale or reducing its expense ratio, and had been a factor in causing its performance to lag its competitors in recent periods. The board also considered that, because of heightened competition in the insurance industry, most municipal securities are now insurable. As a result, the board recognized that applicant, which sought to keep its assets in insured municipal securities, was no longer unique and therefore was less attractive to investors. The board determined that the reorganization offered the greatest likelihood of addressing the asset size and growth problem while reorganizing applicant into an investment company with an identical investment objective and similar investment policies and restrictions. The board further noted that the reorganization would result in continuity of investment services (advisory, transfer agent and distributor services) and no sales or other charges would be imposed on any shares of the Bond Fund acquired by shareholders in the reorganization.

4. On May 24, 1996, the Reorganization Agreement was entered into by applicant, the Bond Fund, and with respect to certain matters, Strong Capital Management, Inc., the investment adviser of both applicant and the Bond Fund. Proxy materials relating to the merger (which were contained in the Bond Fund's registration statement on Form N–14) were filed with the SEC on May 24, 1996, and mailed to applicant's shareholders on July 3, 1996. The Reorganization Agreement was approved by applicant's shareholders on August 27, 1996.

5. As of August 30, 1996, the date of the transfer of assets, there was an aggregate of 2,885,713.293 shares of outstanding common stock of applicant having an aggregate net asset value of $29,090,061.39 and a per share value of $10.08. In accordance with the Reorganization Agreement, applicant transferred its assets to the Bond Fund in exchange for 3,235,825.05 shares of the Bond Fund. Such shares were equal in value to applicant's net asset value. Such Bond Fund Shares received by applicant were then distributed pro rata to applicant's shareholders in complete liquidation of applicant. No brokerage commissions were paid in the exchange.

6. The total expenses incurred in connection with the Reorganization, consisting of legal, accounting, proxy solicitation, liquidation, and other related administrative fees and expenses, were approximately $92,903. The applicant and Bond Fund each paid for their own expenses in connection with entering into and carrying out the transactions contemplated by the Reorganization Agreement. The adviser waived all of applicant's unamortized organizational expenses of $3,600.

7. The applicant has no shareholders, assets, debts or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–5838 Filed 3–7–97; 8:45 am]

BILLING CODE 8010–01–M

[1] Section 17(a) of the Act generally prohibits sales or purchases of securities between registered investment companies and any affiliated person of that company. Rule 17a–8 provides an exemption from section 17(a) for certain reorganizations among registered investment companies that may be affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers.

[Release No. 34–38353; File No. SR–CBOE–96–59]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 1 and 2 to Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to the Listing and Trading of Options on the Morgan Stanley Multinational Company Index

February 28, 1997.

I. Introduction

On October 1, 1996, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade cash-settled, European-style stock index options on the Morgan Stanley Multinational Company Index (''Index''),[3] a broad-based, capitalization-weighted index comprised of 50 large domestic companies, as more fully described below.

The proposed rule change appeared in the Federal Register on October 15, 1996.[4] No comments were received on the proposed rule change. The Exchange subsequently filed Amendment Nos. 1 and 2 to the proposed rule change on December 23, 1996 and on February 5, 1997, respectively.[5] This order approves the CBOE's proposal, as amended, and solicits comments on Amendment Nos. 1 and 2.

II. Description

The Exchange is proposing to list and trade cash-settled, European-style stock index options on the Morgan Stanley Multinational Company Index, a broad-based, capitalization-weighted index composed of 50 high-capitalization

[1] 15 U.S.C. § 78s(b)(1)(1988).

[2] 17 CFR 240.19b–4.

[3] The CBOE has clarified that the name of the Index will be the Morgan Stanley Multinational Company Index. *See* letter from Scott Lyden, Research & Product Development, CBOE, to Stephen M. Youhn, Division of Market Regulation (''Division''), Commission, dated February 5, 1997 (''Amendment No. 2'').

[4] *See* Securities Exchange Act Release No. 37790 (October 4, 1996), 61 FR 53774 (October 15, 1996).

[5] *See* letter from William M. Speth, Senior Research Analyst, Product Development, Research Department, CBOE, to Stephen M. Youhn, Division, Commission, dated December 23, 1996 (''Amendment No. 1''). In Amendment No. 1, the CBOE emended its rule filing regarding, among other things, its maintenance procedures. *See infra* notes 8 and 9, and accompanying text.

domestic stocks.[6] According to the Exchange, the 50 companies that comprise the Index are multinational in nature as they each derive a substantial portion of their earnings from foreign income and have cash flows denominated in multiple currencies. Each of the component securities are traded on the American Stock Exchange, Inc. (''Amex''), the New York Stock Exchange, Inc. (''NYSE''), or through the facilities of the National Association of Securities Dealers (''NASD'') Automated Quotation system (''Nasdaq'') and are reported national market system securities (''Nasdaq/NMS'').

A. Index Design

The Morgan Stanley Multinational Company Index has been designed to measure the performance of certain high capitalization stocks. The Morgan Stanley Multinational Company Index is a capitalization-weighted index with each stock affecting the Index in proportion to its market capitalization. Each stock in the Index is eligible for options trading.

On July 17, 1996, the 50 stocks ranged in capitalization from $138.2 billion (General Electric Co.) to $4.7 billion (Becton Dickinson Inc.). The median capitalization of the firms in the Index was $29.33 billion, while the average capitalization of the Index components was $37.1 billion. The largest stock accounted for 7.33% of the total weighting of the Index, while the smallest accounted for 0.25%. The five highest weighted stocks accounted for 28.8% The average daily trading volume for Index components during the six-month period ending July 16, 1996 was 1.93 million shares.

B. Calculation

The methodology used to calculate the value of the Index is similar to the methodology used to calculate the value of other well-known broad-based indices. The level of the Index reflects the total market value of the component stocks relative to a particular base period. The Morgan Stanley Multinational Company Index base date is December 31, 1991, when the Index value was set to 200. The Index had a closing value of 405.60 on January 6, 1997. The daily calculation of the Morgan Stanley Multinational Company Index is computed by dividing the total market value of the companies in the Index by the Index divisor. The divisor keeps the Index comparable over time and is adjusted periodically to maintain the Index. The values of the Index will be calculated by the CBOE and disseminated at 15-second intervals during regular CBOE trading hours to market information vendors via the Options Price Reporting Authority (''OPRA'').

C. Maintenance

Index maintenance includes monitoring and completing the adjustments for company additions and deletions, share changes, stock splits, stock dividends (other than ordinary cash dividends), and stock price adjustments due to company restructurings or spinoffs. Routine corporate actions, such as stock splits and stock dividends, require simple changes in the common shares outstanding and the stock prices of the companies in the Index and will be handled by CBOE. Non-routine corporate actions, such as share issuances, change the market value of the Index and require an Index divisor adjustment as well. The CBOE will refer all such non-routine matters and other material changes to the Index to Morgan Stanley.[7] Over time the number of component securities in the Index may change. In the event of a stock replacement, the divisor will be adjusted to provide continuity in values of the Index. In addition, whenever a component change is made to the Index, every effort will be made to substitute a component that maintains the character of the Index.[8] Lastly, the CBOE will notify the Commission if: (i) less than 75% of the weight of the Index is comprised of stocks that are eligible for options trading; or (ii) the number of securities in the Index is decreased to less than 35.[9]

D. Index Option Trading

In addition to regular Index options, the Exchange may provide for the listing of long-term index option series (''LEAPS'') and reduced-value LEAPS on the Index (all such LEAPS series are hereinafter referred to as ''LEAPS''). For reduced-value LEAPS, the underlying value would be computed at one-tenth of the Index level. The current and closing Index value of any such reduced-value LEAP will, after such initial computation, be rounded to the nearest one-hundredth.

Strike prices will be set to bracket the Index in 2½ point increments for strikes below 200 and 5 point increments above 200. The minimum tick size for series trading below $3 will be 1/16th and for series trading above $3 the minimum tick will be 1/8th. The trading hours for options on the Index will be from 8:30 a.m. to 3:15 p.m. (Chicago time).

E. Exercise and Settlement

The proposed options on the Index will expire on the Saturday following the third Friday of the expiration month. Trading in the expiring contract month will normally cease at 3:15 p.m. (Chicago time) on the business day preceding the last day of trading in the component securities of the Index (ordinarily the Thursday before expiration Saturday, unless there is an intervening holiday). The exercise settlement value of the Index at option expiration will be calculated by the Exchange based on the opening prices of the component securities on the business day prior to expiration. If a stock fails to open for trading, the last available price on the stock will be used in the calculation of the Index, as is done for other currently listed indexes.[10] When the last trading day is moved because of Exchange holidays (such as when the CBOE is closed on the Friday before expiration), the last trading day for expiring options will be Wednesday and the exercise settlement

[6] A list of Index components is available at the Commission and at the CBOE.

[7] Since Morgan Stanley may be consulted regarding the maintenance of the Index, a ''chinese wall'' has been erected around the personnel at Morgan Stanley who have access to information concerning changes and adjustments to the Index. Details of Morgan Stanley's chinese wall procedures, which are closely modeled on existing procedures for other Morgan Stanley indexes underlying standardized options, have been submitted to the Commission under separate cover.

[8] *See* Amendment No. 1. The Commission expects CBOE to maintain the character of the Index as represented in its proposal, *i.e.*, as an index comprised of very highly capitalized U.S. stocks that are multinational in nature, as defined above. Failure to maintain the Index in this manner would raise issues as to whether additional approval pursuant to Section 19(b) of the Act would be necessary in order for CBOE to continue trading the product. *See also* note 9, *infra.*

[9] *Id.* The Commission notes that its and the CBOE's regulatory responses for failure to meet the above maintenance criteria could include, but are not limited to, the removal of the securities from the Index, prohibiting opening transactions, or discontinuing the listing of new series of Index options. In addition, if the composition of the Index's underlying securities was to substantially change, the Commission's decision regarding the appropriateness of the Index's current maintenance standards would be reevaluated, and whether additional approval under Section 19(b) is necessary to continue to trade the product. *See also* note 8, *supra.*

[10] The Commission notes that pursuant to Article XVII, Section 4 of the Options Clearing Corporation's (''OCC'') by-laws, the OCC is empowered to fix an exercise settlement amount in the event it determines a current index value is unreported or otherwise unavailable. Further, the OCC has the authority to fix an exercise settlement amount whenever the primary market for the securities representing a substantial part of the value of the underlying index is not open for trading at the time when the current index value (*i.e.*, the value used for exercise settlement purposes) ordinarily would be determined. *See* Securities Exchange Act Release No. 37315 (June 17, 1996), 61 FR 42671 (OCC–95–19).

value of Index options at expiration will be determined at the opening of regular Thursday trading.

F. Surveillance

The Exchange will use the same surveillance procedures currently utilized for each of the Exchange's other index options to monitor trading in Index options and Index LEAPS on the Morgan Stanley Multinational Company Index. For surveillance purposes, the Exchange will have complete access to information regarding trading activity in the underlying securities.

G. Position Limits

The Exchange proposes to establish position limits for options on the Morgan Stanley Multinational Company Index at 50,000 contracts on either side of the market, and no more than 30,000 of such contracts may be in the series in the nearest expiration month. These limits are roughly equivalent, in dollar terms, to the limits applicable to options on other indices.

H. Other Exchange Rules and Matters

As modified herein, the Exchange Rules in Chapter XXIV will be applicable to Morgan Stanley Multinational Company Index options. In addition, broad-based margin rules will apply to the Index.

The CBOE is also proposing to amend Exchange Rule 24.14 in order to include specific reference to Morgan Stanley as entitled to the benefit of the disclaimer of liability in respect of the Index.

The CBOE believes that it has the necessary systems capacity to support new series that would result from the introduction of Morgan Stanley Multinational Company Index options. The CBOE has also been informed that OPRA has the capacity to support the new series.

III. Findings and Conclusions

The Commission finds that the proposed rule chang is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[11] Specifically, the Commission finds that the trading of options on the Morgan Stanley Multinational Company Index, includes LEAPS, will serve to promote the public interest as well as to help remove impediments to a free and open securities market. Further, the trading of options on the Index will allow investors holding positions in some or all of the securities underlying the Index to hedge the risks associated with their portfolios. Accordingly, the Commission believes that the Index options will provide investors with an important trading and hedging mechanism. By broadening the hedging and investment opportunities of investors, the Commission believes that the trading of Index options will serve to protect investors, promote the public interest, and contribute to the maintenance of a fair market.[12]

Nevertheless, the trading of options on the Index raises several issues related to the design and structure of the Index, customer protection, surveillance, and market impact. The Commission believes, however, for the reasons discussed below, that the CBOE has adequately addressed these rules.

A. Index Design and Structure

The Commission believes that it is appropriate for the Exchange to designate the Morgan Stanley Multinational Company Index as a broad-based index for purposes of index option trading. Specifically, the Commission believes that the Index is broad-based because, among other reasons, it contains 50 actively-traded stocks representing 27 industry groups, and thus reflects a substantial segment of the U.S. equities market. Accordingly, the Commission believes that it is appropriate for the Exchange to apply its rules governing broad-based index options to trading in the Index options.

The Commission also finds that the large capitalizations, liquid markets, and relative weightings of the Index's component stocks significantly minimize the potential for manipulation of the Index as well as provide a sufficient basis for the Index's maintenance standards.[13] First, the Index represents and consists of the common stock values of 50 actively-traded domestic companies. Second, as of July 17, 1996, no one stock comprised more than 7.33% of the Index's value, and the five highest weighted stocks accounted for only 28.8% of the Index's value. Third, the stocks that comprise the index are actively-traded, with an average daily trading volume for Index components during the six-month period ending July 16, 1996 of 1.93 million shares. Fourth, as of July 17, 1996, the market capitalizations of the stocks in the Index were substantial, ranging from high of $138.2 billion (General Electric Co.) to a low of $4.7 billion (Becton Dickinson Inc.). The median capitalization of th efirms in the Index was $29.33 billion, while the average capitalization of the Index components was $37.1 billion. Fifth, the Index is comprised of stocks representing a diverse group of 27 industries, including pharmaceuticals (15.57%), crude/petroleum (9.26%), and beverages (9.00%). Sixth, all of the component securities currently are eligible for options trading and the maintenance standards require that at least 75% of the index components remains options eligible.[14] Finally, the Commissoin believes that, as discussed below, existing mechanisms to monitor trading actvity in those securities will help to deter as well as to detect illegal trading activity involving Index options.

B. Customer Protection

The Commission believes that a regulatory system designed to protect public customers must be in place before the trading of sophisticated financial instruments, such as options on the Morgan Stanley Multinational Company Index (including full-value and reduced value LEAPS), can commence on a national securities exchange. The Commission notes that the trading of standardized, exchange-traded options occurs in an environment that is designed to ensure, among others things, that: (1) the special risks of options are disclosed to public customers; (2) only investors capable of evaluating and bearing the risks of options trading are engaged in such trading; and (3) special compliance procedures are applicable to options accounts. Accordingly, because the Index options will be subject to the same regulatory regime as the other standardized options currently traded on the CBOE, the Commission believes that adequate safeguards are in place to ensure the protection of investors in

[11] 15 U.S.C. § 78f(b) (1988).

[12] Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of any new securities product upon a finding that the introduciton of such product is in the public interest. Such finding would be difficult with respect to a product that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[13] The Commission notes, however, that if the composition of the Index's underlying securities was to substantially change, its decision regarding the appropriateness of the Index's current maintenance standards would be reevaluated.

[14] The Exchange's options listing standards, which are uniform among the options exchange, provide that a security underlying an option must, among other things, meet the following requirements: (1) the public float must be at least 7 million shares; (2) there must be a minimum of 2,000 stockholders; (3) trading volume must have been at least 2.4 million shares over the preceding twelve months; and (4) the market price per share must have been at least $7.50 for a majority of business days during the preceding three calendar months. *See* Interpretation .01 to Exchange Rule 5.3. *See also* note 8, *supra.*

options on the Morgan Stanley Multinational Company Index.

C. Surveillance

The Commission believes that a surveillance-sharing agreement between an exchange proposing to list a stock index derivative and the exchange(s) trading the stocks underlying the derivative product is an important measure for the surveillance of the derivatives and underlying securities markets. Such agreements ensure the availability of information necessary to detect and to deter potential manipulations and other trading abuses, thereby making the stock index product less readily susceptible to manipulation.[15] In this regard, the markets upon which all of the Index component stocks trade are members of the Intermarket Surveillance Group (''ISG'').[16] Similarly, the options on the individual component securities trade on markets which are ISG members. In addition, the Exchange will apply the same surveillance procedures as those used for existing broad-based index option trading on the CBOE.

The Commission notes that certain concerns are raised when a broker-dealer, such as Morgan Stanley, is involved in the development and maintenance of a stock index that underlies an exchange-traded derivative product. For several reasons, however, the Commission believes that the CBOE has adequately addressed this concern with respect to options on the Morgan Stanley Multinational Company Index.

First, the value of the Index, including the final settlement values, are to be calculated and disseminated independent of Morgan Stanley by the CBOE. Accordingly, neither Morgan Stanley nor any of its affiliates or other persons (except CBOE) will be in receipt of the values prior to their public dissemination. Second, the Commission believes that the procedures Morgan Stanley has established to detect and to prevent material non-public information concerning the Index from being improperly used by members of Morgan Stanley's Equity Research Department, as well as other persons within Morgan Stanley, adequately serve to minimize the susceptibility to manipulation of the index as well as the securities underlying the Index. Finally, the Exchange's existing surveillance produceures for stock index options will apply to the options on the Index and should provide the CBOE with adequate information to detect and to deter trading abuses that may occur. In summary, the Commission believes that the procedures outlined above will ensure that Morgan Stanley will not be able to take advantage of any informational advantages concerning modifications to the composition of the Index due to its role in the maintenance of the Index.

D. Market Impact

The Commission believes that the listing and trading of options on the Morgan Stanley Multinational Company Index, including LEAPS, will not adversely impact the underlying securities, markets.[17] First, as descried above, the Index is broad-based and comprised of 50 stocks with no one stock dominating the Index. Second, as noted above, the stocks contained in the Index have relatively large capitalizations and are relatively actively-traded. Third, the 50,000 contract position and exercise limits, with no more than 30,000 contracts in the nearest expiration month, will serve to minimize potential manipulation and market impact concerns. Fourth, the risk to investors of contra-party non-performance will be minimized because the Index options and LEAPS will be issued and guaranteed by the Options Clearing Corporation (''OCC''), similar to all other standardized option traded in the United States. Fifth, existing CBOE stock index options rules and surveillance procedures will apply to options on the Morgan Stanley Multinational Company Index.

Lastly, the Commission believes that settling expiring Morgan Stanley Multinational Company Index options, including LEAPS, based on the opening prices of component securities is reasonable and consistent with the Act. As noted in other contexts, valuing options for exercise settlement on expiration based on opening prices rather than on closing prices may help reduce adverse effects on markets for stocks underlying options on the Index.[18]

The Commission finds good cause to approve Amendment Nos. 1 and 2 to the proposed rule filing prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. Amendment No. 1 to the CBOE's proposal describes details of certain Index maintenance procedures. In this regard, the Commission believes that the Exchange's review of the Index's component securities will help to ensure that the Index maintains its intended market character as well as remains an appropriate trading vehicle for public customers. In addition, Amendment No. 2, which changes the name of the Index to the Morgan Stanley Multinational Company Index, raises no substantive issues and will help to avoid investor confusion regarding the components of the Index. The Commission also notes that no comments were recevied on the original CBOE proposal, which was subject to the full 21-day notice and comment period. Accordingly, the Commission believes that it is consistent with Section 6(b)(5) of the Act to approve Amendment Nos. 1 and 2 to the proposed rule change on an accelerated basis.

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 1 and 2 to the rule proposal. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–96–59 and should be submitted by March 31, 1997.

[15] *See, e.g.,* Securities Exchange Act Release No. 31243 (September 28, 1992), 57 FR 45849 (October 5, 1992) (CBOE-91-51) (order approving the listing of options on the CBOE Biotech Index).

[16] The ISG was formed on July 14, 1983 to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. *See* Intermarket Surveillance Group Agreement, dated July 14, 1983, amended January 29, 1990. The members of the ISG are the following: the American Stock Exchange, Inc,; the Boston Stock Exchange, Inc.; the CBOE; the Chicago Stock Exchange, Inc.; the National Association of Securities Dealers, Inc.; the New York Stock Exchange, Inc.; the Securities Stock Exchange Inc.; and the Philadelphia Stock Exchange, Inc. The major stock index futures exchanges (including the Chicago Mercantile Exchange and the Chicago Board of Trade) joined the ISG as affiliate members in 1990.

[17] In addition, the CBOE has represented that it and OPRA have the necessary systems capacity to support those new series of index options that would result from the introduction of Index options and LEAPS.

[18] *See, e.g.,* Securities Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33376 (July 28, 1992) (CBOE–92–09) (order approving position limits for European-style Standard & Poor's 500 Stock Index options settled based on the opening prices of component securities).

IV. Conclusion

For the foregoing reasons, the Commission finds that the CBOE's proposal to list and trade options on the Morgan Stanley Multinational Company Index is consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[19] that the proposed rule change (SR–CBOE–96–59), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–5746 Filed 3–7–97; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket OST–96–1334]

Application of Arriva Air International, Inc. for Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause (Order 97–3–4).

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Arriva Air International, Inc., fit, willing, and able, and awarding it a certificate of public convenience and necessity to engage in interstate charter air transportation of property and mail.

DATES: Persons wishing to file objections should do so no later than March 19, 1997.

ADDRESSES: Objections and answers to objections should be filed in Docket OST–96–1334 and addressed to the Department of Transportation Dockets (SVC–120.30, Room PL–401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Delores King, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2343.

[19] 15 U.S.C. § 78s(b)(2) (1988).

[20] 17 CFR 200.30–3(a)(12).

Dated: March 4, 1997.

Patrick V. Murphy,

Deputy Assistant Secretary for Aviation and International Affairs.

[FR Doc. 97–5849 Filed 3–7–97; 8:45 am]

BILLING CODE 4910–62–P

Privacy Act of 1974: Deletion of Systems of Records Notices

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice to delete Privacy Act systems of records.

SUMMARY: The Department of Transportation is deleting the following systems from its inventory of Privacy Act systems of records notices.

EFFECTIVE DATE: March 10, 1997.

FOR FURTHER INFORMATION CONTACT: Crystal M. Bush, Privacy Coordinator, U.S. Department of Transportation, Washington, DC 20590. Telephone: (202) 366–9713.

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974, the Department of Transportation conducted a review of several of its Privacy Act systems of records and determined the following records are covered by DOT/ALL 8, Employee Transportation Facilitation.

System No.	System name
DOT/OST 024 ..	Parking Permit Application Files and Vanpool Application Files.
DOT/OST 025 ..	Parking Permit Management System.

Dated: February 25, 1997.

Crystal M. Bush,

Privacy Act Coordinator.

[FR Doc. 97–5766 Filed 3–7–97; 8:45 am]

BILLING CODE 4910–62–P

Surface Transportation Board

[STB Finance Docket No. 33361]

Wheeling & Lake Erie Railway Company; Trackage Rights Exemption; Consolidated Rail Corporation

Consolidated Rail Corporation (Conrail) has agreed to grant non-exclusive overhead trackage rights to the Wheeling & Lake Erie Railway Company (W&LE) in Canton, OH, between Conrail's Canton Yard and the connection with W&LE's Aultman Line at McKinley, as follows: (1) over Conrail's Track 96 between the connection with W&LE's East End Yard and the connection with Conrail's Fort Wayne Line at milepost 97.8±; (2) over Conrail's Fort Wayne Line between milepost 97.8± and milepost 96.8± at CP Fairhope; and (3) over Conrail's Reed Runner Track (including the crossover connection to the Fort Wayne Line and the portion of the northwest quadrant interchange track at McKinley owned by Conrail) between milepost 96.8± at CP Fairhope and milepost 102.1± at McKinley, together with necessary head and tail room, a total distance of approximately 6.8 miles.

The transaction is scheduled to be consummated on March 3, 1997.

The trackage rights will provide W&LE with an alternate route to its Aultman Line at McKinley, and will allow retirement of three deteriorated crossing diamonds at the McKinley interlocking.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33361, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423.[1] In addition, a copy of each pleading must be served on Thomas J. Litwiler, Esq., Oppenheimer Wolff & Donnelly, Two Prudential Plaza, 45th Floor, 180 North Stetson Avenue, Chicago, IL 60601.

Decided: February 28, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–5864 Filed 3–7–97; 8:45 am]

BILLING CODE 4915–00–P

[1] Due to the Board's scheduled relocation on March 16, 1997, any filings made after March 16, 1997, must be filed with the Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423–0001.

DEPARTMENT OF THE TREASURY

Office of International Investment

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Office of International Investment within the Department of the Treasury is soliciting comments concerning the information collection provisions of the Regulations Pertaining to Mergers, Acquisitions and Takeovers by Foreign Persons, 31 CFR § 800.402.

DATES: Written comments should be received on or before May 2, 1997, to be assured of consideration.

ADDRESSES: Direct all written comments to Gay Sills Hoar, Director, Office of International Investment, ICC Building, Suite 7354, 12th St. and Constitution Ave., N.W., Washington, D.C. 20044, (Tel.: 202/622–1860).

FOR FURTHER INFORMATION CONTACT: Jack Dempsey, Economist (Tel.: 202/622–1860), ICC Building, Suite 7354, 12th St. and Constitution Ave., N.W., Washington, D.C. 20044; Francine McNulty Barber, Attorney-Adviser, Department of the Treasury, 15th St. and Pennsylvania Ave., N.W., Washington, D.C. 20220, (202/622–1947).

SUPPLEMENTARY INFORMATION:

Title: Regulations Pertaining to Mergers, Acquisitions and Takeovers by Foreign Persons.

OMB Number: 1505–0121.

Abstract: The collection of information provided for in this proposed rule is in section 800.402. The information collected under these regulations is used by the Committee on Foreign Investment in the United States (CFIUS), an inter-agency committee chaired by the Secretary of the Treasury and comprised of the Secretaries of State, Defense, Treasury and Commerce, the Attorney General, the U.S. Trade Representative. the Director of the Office of Management and Budget, the Chairman of the Council of Economic Advisers, and the Assistants to the President for National Security, National Economic Policy, and Science and Technology. The President has delegated to CFIUS the President's authority under section 721 of the Defense Production Act to determine the effects on the national security of acquisitions proposed or pending after the date of enactment (August 23, 1988) by or with foreign persons that could result in foreign control of persons engaged in interstate commerce in the United States.

Current Actions: Extension.

Type of Review: Extension.

Affected Public: Foreign businesses and foreign individuals.

Estimated Number of Responses: 100.

Estimated Time Per Respondent: This varies, depending on individual circumstances, with an average of 60 hours.

Estimated Total Annual Burden Hours: 6000 hours.

Requests for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: February 28, 1997.

Francine McNulty Barber,

Attorney-Adviser, Office of the Assistant General Counsel for International Affairs.

[FR Doc. 97–5841 Filed 3–7–97; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF VETERANS AFFAIRS

Medical Research Service Merit Review Committee, Notice of Meetings

The Department of Veterans Affairs gives notice under the Federal Advisory Committee Act, 5 U.S.C. App., of the following meetings to be held from 8 a.m. to 5 p.m. as indicated below:

Subcommittee for	Date	Location
Oncology	Mar. 20–21, 1997	Governor's House.
Alcohlism and Drug Dependence	Mar. 24–25, 1997	Governor's House.
Gastroenterology	Mar. 24–25, 1997	Governor's House.
Respiration	Mar. 24–25, 1997	Holiday Inn Central.
Immunology	Mar. 31–Apr. 1, 1997	Governor's House.
Mental Health and Behavioral Sciences	Apr. 3–4, 1997	Governor's House.
Cardiovascular Studies	Apr. 7–8, 1997	Holiday Inn Central.
Neurobiology	Apr. 7–9, 1997	Governor's House.
Hematology	Apr. 9, 1997	Governor's House.
Surgery	Apr. 12, 1997	Governor's House.
Endocrinology	Apr. 14–15, 1997	Governor's House.
Infectious Diseases	Apr. 14–15, 1997	Governor's House.
Nephrology	Apr. 17–18, 1997	Governor's House.
General Medical Science	Apr. 21–22, 1997	Governor's House.
Aging and Clinical Geriatrics	Apr. 25, 1997	Governor's House.
Medical Research Service Merit Review Committee	June 3, 1997	Governor's House.

Governor's House, 1615 Rhode Island Avenue, NW., Washington, DC 20036.
Holiday Inn Central, 1501 Rhode Island Avenue, NW., Washington, DC 20005.

These meetings will be for the purpose of evaluating the scientific merit of research conducted in each specialty by Department of Veterans Affairs (VA) investigators working in VA Medical Centers and Clinics.

These meetings will be open to the public up to the seating capacity of the rooms at the start of each meeting to discuss the general status of the program. All of the Merit Review Subcommittee meetings will be closed to the public after approximately one hour from the start for the review, discussion, and evaluation of initial and renewal projects.

The closed portion of the meeting involves discussion, examination, reference to, and oral review of site visits, staff and consultant critiques of research protocols and similar documents. During this portion of the meeting, discussion and recommendations will deal with qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, as well as research information, the premature disclosure of which be likely to significantly frustrate implementation of proposed agency action regarding such research projects. As provided by subsection 10(d) of Public Law 92–463, as amended by Public Law 94–409, closing portions of these meetings is in accordance with 5 U.S.C., 552b(c) (6) and (9)(B). Because of the limited seating capacity of the rooms, those who plan to attend should contact Dr. LeRoy Frey, Chief, Program Review Division, Medical Research Service, Department of Veterans Affairs, Washington, DC, (202) 565–5942, at least five days prior to each meeting. Minutes of the meetings and rosters of the members of the Subcommittees may be obtained from this source.

Dated: March 4, 1997.

By Direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 97–5747 Filed 3–7–97; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register
Vol. 62, No. 46
Monday, March 10, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EG97–34–000, et al.]

Atlantis Energy Systems-Germany AG et al.; Electric Rate and Corporate Regulation Filings

Correction

In notice document 97–5339, beginning on page 10033, in the issue of Wednesday, March 5, 1997, make the following correction:

On page 10033, in the second column, in item 3, in the first line of the docket section, docket number ''ER94–1690–11'' should read ''ER94–1690–011''.

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–258–000]

Williams Natural Gas Company; Notice of Proposed Changes in FERC Gas Tarrif

Correction

In notice document 97–5323, appearing on page 10032, in the issue of Wednesday, March 5, 1997, make the following correction:

On page 10032, in the second column, ''[Docket No. RP97-258-000]'' should be inserted before the subject line.

BILLING CODE 1505-01-D

Federal Register

Monday
March 10, 1997

Part II

Securities and Exchange Commission

17 CFR Part 230, et al.

Registration Form Used by Open-End Management Investment Companies; Proposed Rule

Proposed New Disclosure Option for Open-End Management Investment Companies; Proposed Rule

Investment Company Names; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 239, 270, and 274

[Release Nos. 33–7398; 34–38346; IC–22528; S7–10–97]

RIN 3235–AE46

Registration Form Used by Open-End Management Investment Companies

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission is proposing amendments to Form N–1A, the form used by open-end investment companies to register under the Investment Company Act of 1940 and to offer their shares under the Securities Act of 1933. The proposed amendments would revise disclosure requirements for fund prospectuses. Among other things, the proposed amendments seek to minimize prospectus disclosure about technical, legal, and operational matters that generally are common to all funds and, in keeping with the purpose of Form N–1A, to focus prospectus disclosure on essential information about a particular fund that would assist an investor in deciding whether to invest in that fund. The proposed amendments are intended to improve fund prospectuses and to promote more effective communication of information about funds.

DATES: Comments must be received on or before June 9, 1997.

ADDRESSES: Submit comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549–6009. Comments can be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–10–97; this file number should be included on the subject line if E-mail is used. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street, NW, Washington, DC 20549–6009. Electronically submitted comment letters will be posted on the Commission's Internet Web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Jonathan F. Cayne, Attorney, John M. Ganley, Senior Counsel, Markian M.W. Melnyk, Senior Counsel, David U. Thomas, Senior Counsel, Kathleen K. Clarke, Special Counsel, or Elizabeth R. Krentzman, Assistant Director, (202) 942–0721, Office of Disclosure and Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, 450 5th Street, NW, Mail Stop 10–2, Washington, DC 20549–6009.

SUPPLEMENTARY INFORMATION:

The Securities and Exchange Commission (''Commission'') is proposing for comment amendments to Form N–1A (17 CFR 274.11A), the registration form used by open-end management investment companies (''funds'') to register under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (''Investment Company Act'') and to offer their shares under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) (''Securities Act''). The Commission also is proposing technical amendments to rules 481 and 497 under the Securities Act (17 CFR 230.481, .497). In a companion release, the Commission is proposing new rule 498 under the Securities Act and the Investment Company Act, which would permit an investor to buy a fund's shares based on a short-form document, or ''profile,'' that contains a summary of key information about the fund; each investor purchasing fund shares based on a profile would receive a copy of the fund's prospectus with the purchase confirmation.[1] In another companion release, the Commission is proposing new rule 35d–1 under the Investment Company Act, which would require a fund with a name suggesting that it focuses on a particular type of investment (*e.g.*, a fund that calls itself the ABC Stock Fund, the XYZ Bond Fund, or the QRS U.S. Government Fund) to invest at least 80% of its assets in the type of investment suggested by its name.[2]

Table of Contents

I. Introduction and Executive Summary

Over the last decade, the fund industry has experienced enormous growth both in total assets and in the number of funds.[3] Today, fund assets exceed the deposits of commercial banks.[4] Coincident with the explosive growth of fund investments, the business operations of many funds have become increasingly complex as funds seek to offer investors new investment options and a wider variety of shareholder services. These factors, combined with new and more sophisticated fund investments, have resulted in fund prospectuses that often include long and complicated disclosure, as funds explain their operations, investments, and services to investors.

Many have criticized fund prospectuses, finding them unintelligible, tedious, and legalistic.[5]

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[1] Investment Company Act Release No. 22529 (Feb. 27, 1997) (''Profile Release'').

[2] Investment Company Act Release No. 22530 (Feb. 27, 1997) (''Fund Names Release''). Proposed rule 35d–1 would apply to all registered investment companies, including funds, closed-end investment companies, and unit investment trusts.

[3] Investment Company Institute (''ICI'), Mutual Fund Fact Book 29–37 (36th ed. 1996) (''ICI Fact Book'') (between 1987 and 1996, assets increased from $769.9 billion to $3.5 trillion and the number of funds increased from 2,317 to 6,243).

[4] *Compare* ICI, *Trends in Mutual Fund Investing: November 1996* at 3 (Dec. 1996) (ICI News No. ICI–96–107) (fund net assets exceeded $3.5 trillion as of Nov. 1996) *with* 82 Fed. Res. Bull. 12, table 1.21, at A13 (1996) (commercial bank deposits were approximately $2.5 trillion as of Sept. 1996).

[5] *See, e.g.*, ''The SEC and the Mutual Fund Industry: An Enlightened Partnership,'' Remarks by Arthur Levitt, Chairman, SEC, before the ICI's General Membership Meeting at the Washington

Although the prospectus remains the most complete source of information about a fund, technical and unnecessarily lengthy prospectus disclosure often obscures important information relating to a fund investment and does not serve the information needs of the majority of fund investors.[6] As millions of Americans have turned to funds as an investment vehicle of choice,[7] investors need to be provided with clear and comprehensible information that will help them evaluate and compare fund investments.

The Commission is committed to improving the disclosure provided to fund investors [8] and is proposing two major initiatives to meet this objective. First, the Commission is proposing changes to fund disclosure requirements in an effort to focus prospectus disclosure on essential information about a particular fund that would assist an investor in deciding whether to invest in that fund.[9] Second, in a companion release, the Commission is proposing a new rule to permit investors to buy fund shares based on a fund profile (the ''profile'') that would provide a summary of key information about a fund, including the fund's investment objectives, strategies, risks, performance, and fees.[10] Under this proposal, investors would receive the fund's prospectus upon request or no later than with delivery of the purchase confirmation.

These two initiatives are intended to improve fund disclosure by requiring prospectuses to focus on information central to investment decisions, to provide new disclosure options for investors, and to enhance the comparability of information about funds. Taken together, the proposals seek to promote more effective communication of information about funds without reducing the amount of information available to investors.

As part of its commitment to give investors improved disclosure documents, the Commission recently proposed rule amendments to require the use of plain English principles in drafting prospectuses and to provide other guidance on improving the readability of prospectuses.[11] The Commission intends that the plain English initiatives serve as the standard for all disclosure documents, and the plain English proposals are an important counterpart of the proposed fund disclosure initiatives. If adopted, the plain English requirements would apply to fund prospectuses and the profile.

The Commission's efforts to improve fund disclosure are long-standing. In 1983, the Commission introduced an innovative approach to prospectus disclosure by adopting a two-part disclosure format.[12] Under this format, the Commission intended that a fund would provide investors with a simplified prospectus designed to contain essential information about the fund that assists an investor in making an investment decision. The Commission contemplated that more extensive information and detailed discussions of matters included in the prospectus would be available in a Statement of Additional Information (''SAI'') that investors could obtain upon request. In adopting this new format, the Commission's goal was to provide investors with more useful information in ''a prospectus that is substantially shorter and simpler, so that the prospectus clearly discloses the fundamental characteristics of the particular investment company. . . .'' [13]

Since 1983, the Commission has adopted a number of other initiatives to improve fund disclosure, including a uniform fee table and a requirement for management's discussion of fund performance (''MDFP').[14] While these changes have provided investors with clear and helpful information about fund expenses and performance, they were not intended to address overall prospectus disclosure requirements. The Commission has concluded that a comprehensive review and revision of fund disclosure requirements is necessary to improve the information provided in fund prospectuses.[15]

The Commission's consideration of disclosure issues has included evaluating the use of the profile as a standardized, summary disclosure document. The Commission, with the cooperation of the Investment Company Institute (''ICI'') and several large fund groups, conducted a pilot program permitting funds to use profiles (''pilot profiles'') together with their prospectuses.[16] The pilot profiles (like the profile proposed today) contain a summary of key information about the fund. The program's purpose was to determine whether investors found the pilot profiles helpful in making investment decisions. Focus groups conducted on the Commission's behalf

Hilton Hotel, Washington, D.C. (May 19, 1995); *Simple Concept from SEC: Use Plain English in Fund Prospectuses, L.A. Times,* Mar. 2, 1995, at D14; J. Bogle, Bogle on Mutual Funds 147 (1994); Rothchild, *The War on Gobbledygook, Time,* Oct. 31, 1994, at 51; Skrzycki, *Prospectuses to be in English, Donkeys to Fly Tomorrow, Wash. Post,* Oct. 21, 1994, at B1.

[6] A 1995 survey conducted on behalf of the Commission and the Office of the Comptroller of the Currency (''OCC'') found that, although fund investors consulted the prospectus more than any other source of information about the fund they bought, they considered the prospectus only the fifth-best source of information, behind employer-provided written materials, financial publications, family or friends, and brokers. Report on the OCC/SEC Survey of Mutual Fund Investors 12–13 (June 26, 1996). *See also* ICI, The Profile Prospectus: An Assessment by Mutual Fund Shareholders 4 (1996) (''ICI Profile Survey'') (about half of fund shareholders surveyed had not consulted a prospectus before making a fund investment).

[7] Over 30 million U.S. households own funds. ICI Fact Book, *supra* note 3, at 92.

[8] *See* ''Taking the Mystery Out of the Marketplace: The SEC's Consumer Education Campaign,'' Remarks by Arthur Levitt, Chairman, SEC, at the National Press Club, Washington, D.C. (Oct. 13, 1994); ''Investor Protection: Tips from an SEC Insider,'' Remarks by Arthur Levitt, Chairman, SEC, before the Investors' Town Meeting at the Adam's Mark Hotel, Philadelphia, Pa. (June 11, 1996).

[9] As part of the improvements to prospectus disclosure, the Commission is proposing a new rule intended to address certain broad categories of investment company names that are likely to mislead investors about an investment company's investments and risks. The new rule would require funds and other registered investment companies with names suggesting a particular investment emphasis to invest at least 80% of their assets in the type of investment suggested by their name.

[10] Profile Release, *supra* note 1.

[11] Securities Act Release No. 7380 (Jan. 14, 1997) (62 FR 3152) (''Plain English Release'). In conjunction with these proposals, the Commission's Office of Investor Assistance has issued a draft of *A Plain English Handbook: How to Create Clear SEC Disclosure Documents* to explain the plain English principles of the proposed amendments and other techniques for preparing clear disclosure documents. *See also* ''Plain English: A Work in Progress,'' Remarks by Isaac C. Hunt, Commissioner, SEC, before the First Annual Institute on Mergers and Acquisition: Corporate, Tax, Securities, and Related Aspects, Key Biscayne, Fla. (Feb. 6, 1997).

[12] Investment Company Act Release No. 13436 (Aug. 12, 1983) (48 FR 37928) (''Form N–1A Adopting Release').

[13] Investment Company Act Release No. 12927 (Dec. 27, 1982) (48 FR 813, 814) (''Form N–1A Proposing Release').

[14] Investment Company Act Release Nos. 16244 (Feb. 1, 1988) (53 FR 3192) (''Fee Table Adopting Release'') and 19382 (Apr. 6, 1993) (58 FR 19050) (''MDFP Adopting Release''). *See also* Investment Company Act Release Nos. 21216 (July 19, 1995) (60 FR 38454) (''Money Market Fund Prospectus Release'') (proposing amendments designed to make money market fund prospectuses simpler and more informative) and 16245 (Feb. 2, 1988) (53 FR 3868) (''Performance Release'') (adopting a uniform formula for calculating fund performance).

[15] *See, e.g.,* SEC, Report of the Advisory Committee on the Capital Formation and Regulatory Processes (July 24, 1996); SEC, Report of the Task Force on Disclosure Simplification (1996) (''Disclosure Simplification Task Force Report'') (recommending specific improvements in the disclosure provided by corporate issuers).

[16] *See* Investment Company Institute (pub. avail. July 31, 1995) (''1995 Profile Letter''). The Division of Investment Management (the ''Division'') has permitted the pilot program, with some modifications, to continue for another year. *See* Investment Company Institute (pub. avail. July 29, 1996) (''1996 Profile Letter''). The Division also has permitted variable annuity registrants to use ''variable annuity profiles'' together with their prospectuses. National Association for Variable Annuities (pub. avail. June 4, 1996).

(''Focus Groups'') responded very positively to the profile concept. Fund investors participating in a survey sponsored by the ICI also strongly favored the pilot profiles.[17]

In another recent initiative, the Commission issued a release requesting comment on ways to improve risk disclosure and comparability of fund risk levels (''Risk Concept Release'').[18] The Commission received over 3,700 comment letters, mostly from individual investors. Commenters confirmed the importance of risk disclosure to investors when evaluating and comparing funds and highlighted the need to improve prospectus disclosure of fund risks. In particular, commenters indicated that current risk disclosure is difficult to understand and does not fully convey to investors the risks associated with an investment in a fund.

The Commission remains committed to the same goals articulated in adopting Form N–1A. The initiatives proposed today are intended to further these goals and achieve clear and concise disclosure that would assist fund investors in making investment decisions. Based on the Commission's review of current fund prospectuses and related disclosure requirements, the Commission has identified 5 major objectives that form the basis for today's initiatives:

- *Improved prospectus disclosure:* Although some funds have made significant and commendable efforts to improve their prospectuses,[19] prospectus disclosure relating to a fund tends to be overly complex and difficult to follow and should be revised to focus on essential information about the fund to help an investor make an informed investment decision.
- *Fund names:* Although a fund's name (like any other single piece of information about an investment) cannot tell the whole story about a fund investment, names may communicate a great deal to an investor, and investors should have greater assurance that a fund whose name suggests that the fund focuses on certain investments will make those investments.
- *Investor choice:* Different investors prefer different amounts of information before making an investment decision, and regulatory requirements should not foreclose options that respond to prospective investors'' information needs.
- *Standardized fund summaries:* Investors have expressed a strong preference for summary information about funds in a standard format; summaries should provide investors with additional tools to help them make better use of the extensive information available about funds.
- *Clearer risk disclosure:* The risks of investing in a fund often are not readily apparent to investors and should be communicated more effectively.

The proposed disclosure initiatives address these objectives.

Improved Prospectus Disclosure

The proposed amendments would change the disclosure requirements for fund prospectuses. The Commission regards the prospectus as an investor's primary source of information about a fund. A prospectus, however, is not useful to investors if it is in a form that discourages investors from reading it. The prospectus is intended to provide information about matters of fundamental importance to most investors.[20] The Commission's proposals are intended to update and streamline prospectus disclosure requirements to focus on essential information about a particular fund and make the prospectus less technical and easier to read.[21] This initiative is designed to eliminate prospectus clutter that tends to obscure information that could help an investor make an investment decision. The proposed amendments would:

- Move certain disclosure about fund organization and legal requirements from the prospectus to the SAI to focus prospectus disclosure on essential information about a fund, while continuing to assure that the information is available to those interested in reviewing it;
- Permit a fund that is offered as an investment alternative in a participant-directed defined contribution plan to tailor its prospectus for use by plan participants;
- Update and incorporate certain staff disclosure requirements into the amended registration form and include guidance about legal, interpretive, and operational matters in a new ''Investment Company Registration Package,'' which, together, would provide more effective guidance about disclosure and legal matters;[22] and
- Simplify current disclosure instructions to provide clearer guidance for preparing and filing fund registration statements.

Fund Names and Investments

In a companion release, the Commission is proposing a new rule under the Investment Company Act that would address certain broad categories of investment company names that are likely to mislead investors about an investment company's investments and risks. The rule would require a fund or any other registered investment company with a name that suggests a particular investment emphasis (*e.g.*, a fund that calls itself the ABC Stock Fund, the XYZ Bond Fund, or the QRS U.S. Government Fund) to invest at least 80% of its assets in the type of investment suggested by its name.[23] Under current positions of the Division of Investment Management (the ''Division''), these funds and investment companies generally are subject to a 65% investment requirement. The rule would address investment companies with names that suggest the company focuses its investments in a particular country or geographic region and investment companies with names that indicate the company's distributions are exempt from income tax. In addition, the rule would prohibit an investment company from using a name that suggests that the company or its shares are guaranteed or approved by the U.S. Government.

Investor Choice

The proposed initiatives would give investors new disclosure options so that they could determine the amount of information they want to review before investing in a fund. The proposed profile would contain a summary of key information about a fund and enable investors who are comfortable with that level of information to purchase a fund's shares based on the profile.[24] Each investor using the profile to make an investment decision would receive the

[17] *See* ICI Profile Survey, *supra* note 6, at 31–32.

[18] Investment Company Act Release No. 20974 (Mar. 29, 1995) (60 FR 17172).

[19] *See, e.g.*, McTague, Simply Beautiful: Shorn of Legalese, Even Prospectuses Make Sense, Barron's, Oct. 7, 1996, at F10 (about the recent efforts of the John Hancock funds and other fund groups to improve their prospectuses).

[20] *See* Form N–1A Proposing Release, *supra* note 13, at 814.

[21] Under the authority in section 10(a) of the Securities Act (15 U.S.C. 77j(a)), the Commission is proposing amendments to current prospectus disclosure requirements based on its determination that certain disclosure requirements result in information that, while useful to some investors, is not necessary in the public interest or for the protection of investors to be included in the prospectus.

[22] Incorporating certain staff disclosure requirements into the revised form is intended to formally identify those disclosure requirements that would apply to all funds regardless of their particular circumstances. Among other things, the proposed approach seeks to address disclosure requirements that have been developed in connection with an issue presented by a specific fund, but applied to all funds regardless of their particular circumstances. *See* Securities Act Release No. 5906 (Feb. 15, 1978) (regarding a 1977 report of the Advisory Committee on Corporate Disclosure, which, among other things, recommended that, after identifying a disclosure problem of general significance, the Commission initiate rulemaking and not rely for prolonged periods on ad hoc procedures such as commenting on filings and enforcement actions).

[23] Fund Names Release, *supra* note 2.

[24] The profile would be a summary prospectus adopted under sections 10(b) of the Securities Act (15 U.S.C. 77j(b)) and 24(g) of the Investment Company Act (15 U.S.C. 80a-24(g)).

fund's prospectus with the confirmation of his or her investment. Investors also would have the option to request and review the fund's prospectus and other information about the fund (*e.g.*, the fund's shareholder reports and SAI) before making an investment decision.

Standardized Fund Summaries

The proposals would require standardized information in the profile and in a new risk/return summary at the beginning of all fund prospectuses. The profile would include disclosure of 9 items in a specific order and in a question-and-answer format designed to help investors evaluate and compare funds.[25] The risk/return summary at the beginning of the prospectus (also included as the first 4 items in the proposed profile) would highlight information about a fund's investment objectives, strategies, risks and performance, and fees, and make this information readily available to investors in a consistent presentation.

Clearer Risk Disclosure

The proposals seek to improve prospectus disclosure about the risks of investing in a particular fund. Based in large part on comments received in response to the Risk Concept Release,[26] the proposals would improve risk disclosure as follows:

Overall fund risks—A fund would be required to discuss in the prospectus the overall risks of investing in the fund. The proposed amendments are designed to minimize the detailed and technical descriptions of the risks associated with specific portfolio securities typically included in a fund's prospectus and to elicit risk disclosure that relates to the particular fund and would be more useful to investors.

Narrative risk summary—The profile and the prospectus risk/return summary would include a narrative risk summary. The risk summary would provide a concise description of a fund's overall risks that could be used to evaluate and compare the risks of different funds.

Graphic presentation of risk—The profile and prospectus risk/return summary would include a bar chart reflecting a fund's returns over a ten-year period, which would illustrate fund risks by showing changes in the fund's performance from year to year. To help investors evaluate a fund's risks and returns relative to ''the market,'' a table accompanying the bar chart would compare the fund's performance to that of a broad-based securities market index.

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The proposed initiatives are designed to promote more effective communication of information about funds without reducing the amount of information available to investors and other interested parties (*e.g.*, financial analysts and advisers). The proposals would further Commission actions to improve prospectus disclosure beginning with the two-part disclosure format adopted in 1983. Permitting funds to use profiles would respond to investor support for a concise disclosure document highlighting key fund information. The profile would complement the revised prospectus, which, as the primary disclosure document, would be delivered to all investors that purchase fund shares. Taken together, these initiatives are intended to better realize the Commission's commitment to improving disclosure for fund investors.

II. Discussion

Release Organization. The revised Form would retain the overall structure of current Form N–1A. To make the proposed requirements of revised Form N–1A easy to follow and to highlight the proposed changes, this release addresses revised Items in the order that they would appear in the Form. While some Items in proposed Part A (the prospectus) would not be changed (except for technical revisions to improve clarity), other Items would be new or extensively revised. Certain disclosure currently required in the prospectus would be moved to Part B (the SAI), where the information would continue to be available to investors and others who are interested in the information.[27] The proposed amendments would incorporate certain disclosure requirements from the Guidelines for Form N–1A (the ''Guides'') and the Generic Comment Letters (''GCLs'') that have been issued over time by the Division.[28]

The proposed amendments also would revise the General Instructions to Form N–1A to update the Instructions and make them easier to use. The release discusses in detail the proposed changes to the General Instructions after discussing changes to the Form's disclosure requirements.[29] The proposed amendments would add several definitions to the General Instructions to standardize certain terms used in the Form. In particular, a new definition of ''fund'' would accommodate the use of Form N–1A by series funds.[30] The General Instructions also would address other matters regarding the use of Form N–1A, including disclosure relating to multiple funds and classes, prospectuses used in the defined contribution plan market, and incorporation by reference.

Plain English. Investment company registration statement forms currently include instructions, which govern all prospectus disclosure, directing a fund to provide information in the prospectus in a clear, concise, understandable manner by, among other things, avoiding the use of technical or legal terms, complex language, or excessive detail.[31] The Commission's plain English proposals also would apply to prospectus disclosure.[32] Initially, the proposed plain English principles would apply to the front and back cover pages of a fund's prospectus and to the summary of the prospectus, if any.[33] Because the Commission issued the plain English release before this release proposing amendments to Form N–1A, the proposed requirement for plain English risk factors disclosure does not specifically identify the proposed risk/return summary, which is the parallel type of disclosure for funds and is not a summary of the prospectus. If the proposed plain English requirements and the proposed risk/return summary are adopted, the Commission intends to clarify that plain English disclosure principles apply to the risk/return summary.[34] The Commission also requested comment whether the plain English disclosure principles should be modified for fund prospectuses.

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[25] The profile would include disclosure about a fund's investment objectives, strategies, risks and performance, fees, investment adviser and portfolio manager, purchase and redemption procedures, tax implications, and the services available to shareholders. *See* Profile Release, *supra* note .

[26] The Commission also considered other information about fund risk disclosure, including the results of an investor survey sponsored by the ICI. *See* ICI, Shareholder Assessment of Risk Disclosure Methods (1996) (''ICI Risk Survey').

[27] In addition, Parts B and C of proposed Form N–1A would include a number of technical revisions to clarify and simplify the Form's requirements.

[28] *See* Letters to Registrants (Jan. 11, 1990) (''1990 GCL''); (Jan. 3, 1991) (''1991 GCL''); (Jan. 17, 1992) (''1992 GCL''); (Feb. 22, 1993) (''1993 GCL''); (Feb. 25, 1994) (''1994 GCL''); (Feb. 3, 1995) (''1995 GCL''); (Feb. 16, 1996) (''1996 GCL''). For a discussion of the Guides and GCLs, *see infra* notes 255–261 and accompanying text.

[29] *See infra* Part II.D.

[30] Funds often organize as series funds and offer investors an opportunity to invest in one or more ''portfolios,'' each of which has a specific investment objective. The revised Form would define a ''fund'' to include both the registrant and a series of the registrant unless otherwise indicated.

[31] *See, e.g.*, General Instruction G of Form N–1A.

[32] *See* Plain English Release, *supra* note 11.

[33] *Id.* (proposing amendments to add new paragraph (d) to rule 421 under the Securities Act (17 CFR 230.421)).

[34] To improve the clarity of prospectus disclosure, the Plain English Release also proposed revisions to Regulation S–K (17 CFR 229.10 *et seq.*), which sets out general disclosure requirements for corporate issuers. Similar requirements are included in specific rules for funds, and conforming changes to these rules would be made in connection with this and other fund disclosure initiatives. *See* proposed amendments to rule 481(b)(1) (disclaimer about the Commission's approval of securities offered in a prospectus), *infra* note 31.

A. Part A—Information in the Prospectus

1. Item 1—Front and Back Cover Pages

Form N–1A requires certain information to appear on the outside front cover page of a fund's prospectus. In an effort to ''declutter'' the prospectus cover page and avoid repeating information contained in the proposed risk/return summary at the beginning of the prospectus, the proposed amendments would simplify the disclosure currently required on the front cover page and require certain information to be included on the outside back cover page.

The front cover page would be required to include a fund's name.[35] The front cover page also would include the disclaimer about the Commission's approval of the securities being offered and the accuracy and adequacy of the information included in the prospectus. The wording of the disclaimer would be simplified and the disclaimer would no longer be required to be in large capital letters and bold-faced type.[36]

The proposed amendments would not require cover page disclosure that would repeat information required to be disclosed in the proposed risk/return summary. This information would include the identification of the type of fund offered (or a brief statement of the fund's investment objectives) and certain disclosure required for money market funds.[37] The proposed amendments also would no longer require a fund to provide statements that the prospectus sets forth concise information about the fund that a prospective investor ought to know before investing and should be retained for future reference.[38] These statements do not appear to be particularly helpful to investors.

The proposed amendments would consolidate disclosure regarding the availability of additional information about a fund on the back cover page of the fund's prospectus. The back cover page would include disclosure about the availability and date of the SAI, which would be revised to require a telephone number that investors could use to obtain the SAI without charge. To ensure prompt delivery of the SAI to those investors who request it, a new Instruction would require a fund to send the SAI within 3 days of the receipt of a request.[39] The back cover page would include information (if applicable) regarding the incorporation by reference of a fund's SAI or financial information from the annual report into the prospectus and disclosure that other information about the fund has been filed with, and is available from, the Commission.[40] The back cover page also would include disclosure about how a shareholder can make inquires about the fund.[41]

2. Item 2—Risk/Return Summary: Investments, Risks, and Performance

The proposed amendments would require at the beginning of every prospectus a risk/return summary that would provide key information about a fund's investment objectives, principal strategies, risks, performance, and fees. This information would be required to appear in a specific sequence and to be presented in a question-and-answer format.[42] The proposed question-and-answer format, frequently used by many funds, is intended to help communicate the required information effectively. The Commission requests comment on this format and whether funds instead should be permitted to choose the type of heading for the prescribed disclosure topics.

The risk/return summary, like the profile, is intended to respond to investors' strong preference for summary information about a fund in a standardized format.[43] Since the profile would be optional, the proposed risk/return summary in the prospectus would provide all investors with key information about a fund in a standardized, easily accessible place that could be used to evaluate and compare fund investments.

a. Investment Objectives and Principal Strategies

The proposed amendments would require a fund to disclose in the risk/return summary its investment objectives and to summarize, based on the information provided in the prospectus, how the fund intends to achieve those objectives. The summary would be required to identify the fund's principal investment strategies, including the particular types of securities in which the fund invests or will invest principally, and any policy of the fund to concentrate in an industry or group of industries.[44]

A fund also would be required to inform investors about the availability of additional information about the fund's investments in the fund's shareholder reports. Fund annual reports typically include the MDFP, which discusses a fund's strategies that materially affected the fund's performance during the most recent fiscal year.[45] The Division's review of and experience with MDFP disclosure indicates that the annual report may be a valuable resource for investors.[46] The

[35] When a prospectus relates to one or more series, both the name of the registrant and the series would be required to appear on the back cover page. The name of the registrant may assist investors in obtaining additional information about a particular series or the registrant.

[36] Proposed amendments to rule 481(b)(1) under the Securities Act (17 CFR 230.481(b)(1)). Amended rule 481(b)(1) would require disclosure to the effect that: The Securities and Exchange Commission has not approved or disapproved these securities or passed upon the adequacy of this prospectus and any representation to the contrary is a criminal offense. The same revisions to Item 501 of Regulation S–K (17 CFR 229.501) were recently proposed for corporate registrants. *See* Plain English Release, *supra* note 11. *See also* Disclosure Simplification Task Force Report, *supra* note 15, at 18.

[37] *See infra* notes 52–58 and accompanying text.

[38] *See* Disclosure Simplification Task Force Report, *supra* note 15, at 19 (recommending elimination of many legal warnings to make the cover page more inviting and present any necessary legal warnings in a more readable style and format). *See also* Plain English Release, *supra* note 11, at 3160.

[39] *See* Letter from Paul Schott Stevens, Senior Vice President and General Counsel, ICI, to Barry P. Barbash, Director, Division of Investment Management, SEC, at 11 (May 20, 1996) (''ICI Survey Letter'') (recommending that funds be required to *deliver* shareholder reports within 3 days of a request); Form N–2 (17 CFR 274.11a-1) (requiring closed-end investment companies to include a telephone number for investors to request a SAI and to send the SAI within 2 days of a request).

[40] The disclosure would be revised to indicate, among other things, that information about the fund (including the SAI) is available on the Commission's Internet Web site. Currently, only funds that disseminate prospectuses electronically are required to provide disclosure about the Commission's Web site. *See* Investment Company Act Release No. 21946 (May 9, 1996) (61 FR 24652).

[41] This information currently is required by Item 6(e) to be disclosed in the prospectus. To assist the Division in responding to investor inquiries, the proposed amendments would require a fund to include its Investment Company Act file number on the back cover page.

[42] The information in the risk/return summary would be substantially the same as the first 4 items of the proposed profile. *See* Profile Release, *supra* note 1.

[43] Focus Group participants, for example, expressed strong support for summary information in a standardized format. In addition, in connection with the profile initiative, many individual investors have written to the Commission about the need for concise, summary information relating to a fund. *See also Profile Prospectuses: An Idea Whose Time Has Come*, Mutual Funds Magazine, Aug. 1996, at 11. In keeping with the goal of providing key information in a standardized summary, proposed General Instruction C.2(b) would not permit a fund to include in the risk/return summary information that is not required or otherwise permitted.

[44] The criteria for determining whether a particular strategy is a principal strategy and disclosure about concentration policies are discussed *infra* notes—and accompanying text.

[45] *See* proposed Item 5 (current Item 5A) (requiring the MDFP to be disclosed in the prospectus unless disclosed in the annual report).

[46] Commenters also have cited the annual report as a source of valuable information. *See* Voss Sanders, *Dear Shareholder,* Morningstar Mutual Funds, Apr. 26, 1996, at 1 (commenting on improved annual report disclosure).

proposed amendments would require the risk/return summary to contain disclosure to the following effect:

Additional information about the fund's investments is available in the fund's annual and semi-annual reports to shareholders. In particular, the fund's annual report discusses the relevant market conditions and investment strategies used by the fund's investment adviser that materially affected the fund's performance during the last fiscal year. You may obtain these reports at no cost by calling _____.[47]

The proposed amendments would require this disclosure to appear in the context of information about a fund's investments. The Commission requests comment on this approach. For example, would disclosure about the availability of additional information about the fund (*e.g.*, the fund's shareholder reports, SAI, or any other information) be more helpful to investors if the disclosure was presented under a separate caption in the risk/return summary or on the back cover page of the prospectus? Should this disclosure include an explanation about the various types of information available to investors?[48]

b. Risks

Narrative Risk Disclosure. The proposed amendments would require a fund to summarize the principal risks of investing in the fund based on the information provided in the prospectus. More than 75% of the individual investors commenting on the Risk Concept Release specifically favored requiring a risk summary in fund prospectuses. This disclosure would be required to focus on the risks to which the fund's particular portfolio as a whole is subject and the circumstances reasonably likely to affect adversely the fund's net asset value, yield, and total return.[49] The risk section of the risk/return summary also would include disclosure about the risk of losing money and identify the types of investors for whom the fund may be an appropriate or inappropriate investment (based on, for example, an investor's risk tolerance and time horizon).[50] A fund, at its option, could discuss in the risk section the potential rewards of investing in the fund as long as the discussion provides a balanced presentation of the fund's risks and rewards.[51]

Special Risk Disclosure Requirements. Certain types of funds are required to provide special disclosure on the cover page of their prospectuses. Form N–1A requires a money market fund to disclose on the cover page of its prospectus that an investment in the fund is neither insured nor guaranteed by the U.S. Government, and that there can be no assurance that the fund will be able to maintain a stable net asset value of $1.00 per share.[52] The Form requires a tax-exempt money market fund that concentrates its investments in a particular state (a ''single state money market fund'') to disclose that the fund may invest a significant percentage of its assets in a single issuer and that investing in the fund may be riskier than investing in other types of money market funds.[53] The disclosure required for all money market funds is intended to alert investors that investing in a money market fund is not without risk.[54] The disclosure required for single state money market funds seeks to inform investors about the particular risks associated with a single state money market fund and to distinguish these funds from other money market funds.[55] In addition, a fund that is advised by or sold through a bank is required to disclose on the cover page of its prospectus that the fund's shares are not deposits or obligations of, nor guaranteed or endorsed by, the bank, and that the shares are not insured by the Federal Deposit Insurance Corporation (''FDIC'') or any other government agency.[56] This disclosure is intended to alert investors that funds advised by or sold through banks are not federally insured.[57]

The proposed amendments would move the required disclosure for all money market funds, single state money market funds, and funds advised by or sold through banks to the risk section of the risk/return summary. Since this disclosure relates directly to a particular fund's risks, it would appear to be more meaningful to investors when presented in the context of information about the fund's risks. The proposed approach also would help streamline the prospectus cover page and avoid repeating information on the cover page and in the risk section of the risk/return summary.

The proposed amendments would revise the wording of the current disclosure required for all money market funds and funds advised by or sold through banks. The proposed amendments would simplify the disclosure that fund shares are not federally insured as follows:

An investment in the fund is not insured or guaranteed by the FDIC or any other government agency.

The proposed amendments also would simplify the technical disclosure that a money market fund may not be able to maintain a stable net asset value. The revised disclosure would state:

Although the fund seeks to preserve the value of your investment at $1.00 per share,

[47] If applicable, a fund could indicate that its annual and semi-annual reports are available on its Internet site or by E-mail. In addition, a fund that provides its MDFP in the prospectus or a money market fund (which is not required to prepare a MDFP) would omit the second sentence of this disclosure.

[48] As proposed, the back cover page of the prospectus would include more general disclosure about the availability of additional information.

[49] *See infra* notes 133–138 and accompanying text. The proposed amendments also would require a fund to disclose, if applicable, that it is non-diversified. *See* section 5(b) of the Investment Company Act (15 U.S.C. 80a–5(b)) (regarding diversified and non-diversified funds). To help investors understand this disclosure, a non-diversified fund would be required to describe the effects and to summarize the risks of non-diversification.

[50] Information about whether a fund is appropriate for particular types of investors is designed to help investors evaluate and compare funds based on their investment goals and individual circumstances. In the pilot profiles, this information is presented under a separate caption relating to the appropriateness of an investment for certain investors. Because this information is closely related to the risks of investing in a fund, the proposed amendments would integrate this disclosure into the risk section of the risk/return summary.

[51] The 1996 Profile Letter, in contrast, permits disclosure about the rewards of investing in a fund only if presented separately from disclosure about the fund's risks. 1996 Profile Letter, *supra* note 16, at 2.

[52] Item 1(a)(vi).

[53] Item 1(a)(vii). This disclosure is not required if the fund limits its investments in a single issuer to no more than 5% of the fund's assets.

[54] *See* Investment Company Act Release Nos. 17589 (July 17, 1990) (55 FR 30239, 30247) and 18005 (Feb. 20, 1991) (56 FR 8113, 8123) (proposing and adopting revisions to rules relating to money market funds).

[55] Unlike other money market funds, a single state money market fund is not subject to the issuer diversification requirements of rule 2a–7 (17 CFR 270.2a–7). In March 1996, the Commission adopted amendments to rule 2a–7 that would require a single state money market fund, with respect to 75% of its assets, to invest no more than 5% of its assets in securities of a single issuer. Investment Company Act Release No. 21837 (Mar. 21, 1996) (61 FR 13956). The Commission has suspended the compliance date for these amendments pending the adoption of technical changes to amended rule 2a–7. Investment Company Act Release Nos. 22135 (Aug. 13, 1996) (61 FR 42786) and 22283 (Dec. 10, 1996) (61 FR 66621).

[56] 1994 GCL, *supra* note 28, at II.B; Letter to Registrants from Barbara J. Green, Deputy Director, Division of Investment Management, SEC (May 13, 1993) (''Division Bank Letter'').

[57] *See* Division Bank Letter, *supra* note 56. *See also Testimony of Ricki Helfer, Chairman, FDIC, on FDIC Survey of Nondeposit Investment Sales at FDIC-Insured Institutions Before the Subcomm. on Capital Markets, Securities, and Government Sponsored Enterprises of the House Comm. on Banking and Financial Services,* 104th Cong., 2d Sess. (June 26, 1996) (citing surveys in October 1995 and April 1996 indicating that approximately one-third of bank customers either thought that, or did not know whether, funds sold through banks were insured).

it is possible to lose money by investing in the fund.[58]

The Commission requests comment whether the disclosure required for all money market funds, single state money market funds, and funds advised by or sold through banks should be moved from the prospectus cover page to the risk/return summary. If the disclosure is moved from the cover page, should it be highlighted in a typographically distinctive manner (*e.g.*, boldface or italics)? The Commission also requests comment on the wording of the proposed disclosure. In addition, the Commission requests comment whether the disclosure for single state money market funds should continue to be required. The disclosure, for example, may exaggerate the risks of a single state money market fund since these funds, like all money market funds, may purchase only those portfolio instruments that meet the credit quality and maturity requirements of rule 2a–7.[59]

Risk/Return Bar Chart and Table. The proposed amendments would require a bar chart showing a fund's annual returns for each of the last 10 calendar years and a table comparing the fund's average annual returns for the last one, five, and ten fiscal years to those of a broad-based securities market index.[60] The bar chart would illustrate graphically a fund's past risks by showing changes in the fund's returns over time. The information in the table would enable investors to evaluate a fund's performance and risks relative to ''the market.'' Over 75% of individual investors responding to the Risk Concept Release favored a bar chart presentation of fund risks.[61] Focus Group participants found both a bar chart and tabular presentation of fund performance helpful in evaluating and comparing fund investments, particularly when the table included return information for a broad-based index.

The proposed amendments would require the bar chart and table to be included in the risk section of the risk/return summary under a subheading that refers to both risk and performance.[62] To help investors use the information in the bar chart and table, the proposed amendments would require a fund to explain how the information illustrates the fund's risks and performance.

An example of the risk/return bar chart and table is set forth below:

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[58] The proposed disclosure, which would be required to be given by a money market fund in place of the proposed general risk disclosure about losing money, seeks to strike a balance between the potential to lose money in a money market fund and the relative risk of losing money in a money market fund as compared to other types of funds.

[59] Among other things, rule 2a–7 requires a money market fund to invest in securities that are rated in one of the two highest categories by a nationally recognized statistical rating organization (or, if unrated, to be of comparable quality) and have a maturity of 13 months or less. Rules 2a–7 (a)(9) and (c)(3).

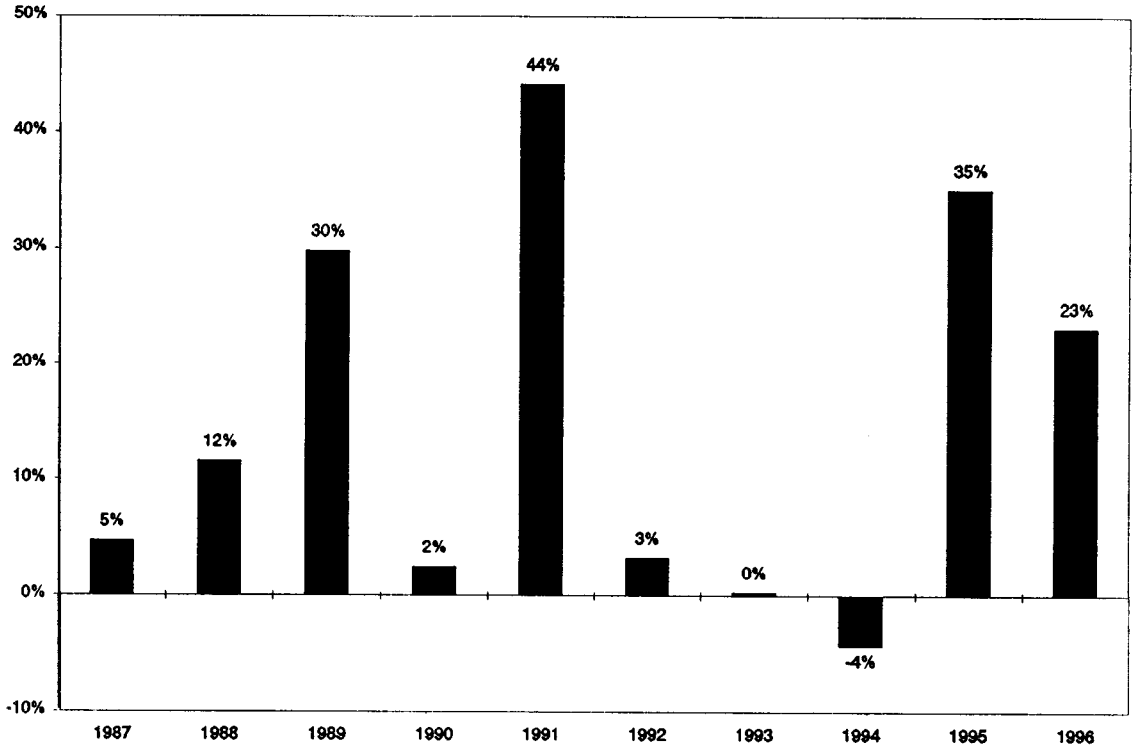
[60] Proposed Item 2(c)(2).

[61] Risk Concept Release, *supra* note 18. *See also* ICI Risk Survey, *supra* note 26, at 21, 37 (51% of survey participants indicated they were very confident about using a bar chart to compare the risks of different funds and 49% of survey participants indicated they were very confident in using a bar chart to assess the risks of a single fund). In addition, all commenters responding to the Commission's initiative to simplify money market fund prospectuses supported the proposal to replace the financial highlights information in money market fund prospectuses with a ten-year bar chart reflecting a money market fund's returns. *See* Summary of Comment Letters on Proposed Amendments to the Rules Regulating Money Market Fund Prospectuses Made in Response to Investment Company Act Release No. 21216, at 2 (File No. S7–21–95) (''Money Market Prospectus Comment Summary'').

[62] The 1996 Profile Letter, in contrast, requires the bar chart and table to appear under a caption relating to a fund's past performance. 1996 Profile Letter, *supra* note 16, at 2.

RISK AND PERFORMANCE INFORMATION

The bar chart and table shown below illustrate the XYZ Stock Fund's risks and performance by showing changes in the Fund's performance from year to year over a 10-year period and by showing how the Fund's average annual returns for one, five, and ten years compare to those of a broad-based securities market index. How the Fund has performed in the past is not necessarily an indication of how the Fund will perform in the future.



Average Annual Total Returns (for the periods ending December 31, 1996)	Past One Year	Past 5 Years	Past 10 Years
XYZ Stock Fund	23.2%	11.5%	15%
S & P 500	20.26%	12.87%	12.58%

The S & P 500® is the Standard & Poor's Composite Index of 500 Stocks, a widely recognized, unmanaged index of common stock prices.

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Bar Chart Return Information. [63] The proposed amendments would require the bar chart to reflect annual returns for a fund's last 10 calendar years. [64] Requiring calendar year returns is intended to help investors compare the risks of different funds over similar time periods.

A fund would calculate the annual returns in the bar chart by using the same method required for calculating annual returns in the financial highlights information included in fund prospectuses. [65] Like the returns in the financial highlights information, the returns in the bar chart would not reflect sales loads. Sales loads can be accurately and fairly reflected in return information of the type contained in the table by deducting sales loads at the beginning (or end) of particular periods from a hypothetical initial fund investment. [66] Reflecting sales loads in the bar chart, however, may be impracticable. In addition, reflecting the payment of sales loads may be less important in the bar chart than in the table, since the bar chart is intended primarily to depict fund risks graphically. The proposed amendments would require a fund that charges sales loads to disclose that sales loads are not reflected in the bar chart and that if the loads were included, returns would be less than those shown. [67]

The Commission requests comment on the proposed bar chart. In particular, the Commission requests comment whether the bar chart communicates information about fund risks effectively or whether the bar chart has limitations that detract from its usefulness. [68] The Commission requests comment whether the bar chart should include return information for additional or different time periods. For example, should the bar chart reflect return information for shorter time periods (*e.g.*, calendar quarters) or longer time periods (*e.g.*, for the life of the fund when more than 10 years)? The Commission also requests comment whether the return information in the bar chart should include sales loads and, specifically, how sales loads could be accurately and fairly reflected.

Bar Chart Presentation for More than One Fund. The proposed amendments would not limit the number of funds for which return information could be included in a single bar chart. While the proposed approach would give funds flexibility in preparing the bar chart, including return information in a single bar chart for a number of funds could make the graphic presentation of the bar chart complex and difficult to follow. [69] Bar charts included in the pilot profiles reflect information for only one fund. [70] In addition, Focus Group participants found prototype bar charts that included information for 6 funds (*i.e.*, 6 bars per year) to be confusing. The Commission requests comment whether the number of funds that could be included in a single bar chart should be limited to one fund or to some other number of funds (*e.g.*, 2, 4, or no more than 6 funds). This approach could enhance the clarity of the bar chart presentation. Limiting the number of funds that could be included in a single bar chart, however, could require a prospectus offering several funds to include more than one chart, which, in turn, could complicate bar chart disclosure and lengthen the prospectus.

Multiple Class Funds. In contrast to the proposed approach with respect to the bar chart presentation for funds, the proposed amendments would require a multiple class fund to include annual return information in the bar chart for only one class. [71] Unlike individual funds, classes represent interests in the same investment portfolio, and the returns of each class differ only to the extent the classes do not have the same expenses. Including return information for all classes appears to be unnecessary to illustrate the risks of investing in the fund. In addition, the proposed amendments would require the table accompanying the bar chart to provide return information for each class so that investors would be able to identify and compare the performance of the classes offered in the prospectus.

The proposed amendments would require the bar chart to reflect annual return information for the class offered in the prospectus that has returns for the longest period over the last 10 years. This approach is intended to provide the greatest amount of information about changes in the fund's returns. When two or more classes have returns for at least 10 years or returns for the same period but fewer than 10 years, the fund would be required to provide annual returns for the class with the greatest net assets as of the end of the most recent calendar year. Focusing on the class with the greatest net assets is intended to provide returns in the bar chart for a ''representative'' class offered in the prospectus.

The proposed requirements may result in including returns in the bar chart for a class that has lower annual operating expenses (and better performance) than other classes offered in the prospectus. The Commission considered several other approaches, including requiring a fund to show returns in the bar chart for the class with the highest annual operating expenses. The Commission has not proposed these alternatives because they would make the bar chart requirements too complex and difficult to apply. In addition, the bar chart primarily is designed to show graphically the risks of investing in a fund and not the costs of investing in the fund. The Commission requests comment whether the bar chart presentation for multiple class funds should be limited to one class. If so, should the selection of the class be made on a basis other than that proposed?

Tabular Presentation of Fund and Index Returns. The proposed amendments would require the table accompanying the bar chart to present the fund's average annual returns for the

[63] Funds generally file Form N–1A electronically on the Commission's electronic data gathering analysis and retrieval system (''EDGAR''). Although EDGAR currently does not reproduce graphic images like the bar chart, the EDGAR rules require a fair and accurate narrative description or tabular presentation in the place of any omitted material. Rule 304(a) of Regulation S–T (17 CFR 232.304(a)). The Commission anticipates future modifications that would permit EDGAR to reflect graphic images on electronically-filed documents.

[64] A fund also would be required to present the corresponding numerical return next to each bar. The proposed amendments would require a fund to have at least one calendar year of returns before including the bar chart. A fund that includes a single bar in the bar chart or a fund that does not include the bar chart because the fund does not have annual returns for a full calendar year would be required to modify, as appropriate, the narrative explanation accompanying the bar chart and table (*e.g.*, by stating that the information shows the fund's risks and performance by comparing the fund's performance to a broad measure of market performance). The proposed amendments would require the bar chart of a fund in operation for fewer than 10 years to include annual returns for the life of the fund.

[65] Instruction 1(a) to proposed Item 2(c)(2). *See also* Instruction 3 to proposed Item 9(a) (regarding the calculation of total returns provided in financial highlights information).

[66] As a consequence, the fund's average annual returns in the table would reflect the payment of sales loads (if any).

[67] Instruction 1(a) to proposed Item 2(c)(2) (requiring similar disclosure if a fund charges account fees).

[68] *See, e.g.*, Remarks by Steven M.H. Wallman, Commissioner, SEC, before the ICI's 1995 Investment Company Directors Conference and New Directors Workshop, Washington, DC. (Sept. 22, 1995) (discussing circumstances when a bar chart's presentation of fund risks may be confusing to investors, such as when bar charts use different scales).

[69] While the proposed amendments would not impose a specific limit on the number of funds included in a bar chart, the presentation of the bar chart would be subject to the general requirement that information in the prospectus be set forth in a clear and understandable manner. *See* proposed General Instruction C.1(a).

[70] *See* 1995 Profile Letter, *supra* note 16 (permitting the pilot profiles to include disclosure for a single fund or series of a fund).

[71] Instruction 3(a) to proposed Item 2(c)(2).

last one, five, and ten fiscal years (or for the life of the fund, if shorter)[72] and to compare that information to the returns of a broad-based securities market index.[73] Requiring comparative return information for a broad-based securities market index would provide investors with a basis for evaluating a fund's performance and risks relative to the market.[74] The proposed approach also would be consistent with the line graph presentation of fund performance required in MDFP disclosure.[75]

Consistent with the requirements for preparing the MDFP line graph, the proposed amendments would allow a fund to include return information for other indexes, including a ''peer group'' index of comparable funds.[76] Focus Group participants indicated that comparing fund returns to a broad-based securities market index and a peer group index could be useful in evaluating and comparing fund investments.[77]

The Commission believes that a comparison of a fund's performance to a broad-based securities market index can assist investors in evaluating the risk of a fund investment. The proposed amendments would include this information in the table accompanying the bar chart to minimize the complexity of the graphic presentation of a fund's risks and returns. The Commission recognizes that other presentations could improve fund risk disclosure and requests comment on alternative approaches.[78] Specifically, the Commission requests comment on requiring the annual returns of a broad-based securities market index (and any optional peer group or other index) to appear in the bar chart instead of the table. By providing investors with a graphic illustration of the relationship between the returns of the fund and the index(es), this approach could help investors evaluate the comparative risk of the fund and the index(es). Including additional bars or lines for index comparisons in the bar chart, however, could complicate the chart (especially if the chart included return information for more than one fund) and make it difficult for investors to follow.

As an alternative to, or in addition to the bar chart, the Commission requests comment on requiring a fund to show its highest and lowest annual returns (or ''range'' of returns) over a ten-year or other period compared with the same information for a broad-based market index (and any optional peer group or other index). This information, which could be presented as a separate table or included in the proposed table showing a fund's average annual returns, could help investors assess fund risks.

3. Item 3—Risk/Return Summary: Fee Table

Form N–1A would continue to require a fee table in the prospectus, which summarizes the sales loads and expenses associated with an investment in a fund. The fee table seeks to provide uniformity, simplicity, and comparability in fee disclosure.[79] Consistent with this objective, the Commission is proposing several amendments designed to improve fee table disclosure.

a. Fee Table Example

Form N–1A requires an ''Example'' to accompany the fee table that discloses the cumulative amount of fund expenses over one, three, five, and ten year periods based on a hypothetical investment of $1,000 and an annual 5% return. The Example primarily is intended to provide information about the cost of investing in one fund that can be compared with similar information about another fund.[80] Focus Group participants, however, had difficulty understanding and using the information in the Example.

The proposed amendments seek to improve the Example by requiring a fund to provide a specific narrative description that explains the purpose of the information presented. The revised Form would require a narrative explanation to the following effect:

> This Example is intended to help you compare the cost of investing in the fund to the cost of investing in other mutual funds.[81]

To further assist investors in understanding the Example, the proposed amendments would revise the description of how the Example is calculated.[82]

The proposed amendments also would increase the initial hypothetical investment in the Example from $1,000 to $10,000. The increase is intended to reflect a typical fund investment (many funds have minimum investments exceeding $1,000) and more closely approximate the amount of expenses that may be paid over time.[83] Using the $10,000 figure in the Example also would be consistent with the $10,000

[72] The proposed amendments would require a money market fund to provide its 7-day yield in the table. A non-money market fund would be permitted to disclose its yield, and any fund (including a money market fund) would be permitted to disclose its tax-equivalent yield. When yield information is disclosed, a fund would be required to include a telephone number that investors can use without charge to obtain current yield information.

[73] A fund's average annual returns would be calculated using the same method required to calculate fund performance included in advertisements, which reflects the payment of sales loads and recurring shareholder account fees. Instruction 2(a) to proposed Item 2(c)(2) (incorporating the requirements of proposed Item 21). *See also* proposed Item 5 (requiring sales loads and recurring shareholder account fees to be reflected in the return information shown in the MDFP line graph). Consistent with the preparation of the MDFP line graph, if a fund has not had the same adviser for the last 10 years, the fund would be permitted to begin the bar chart and performance information in the table on the date the new adviser began to provide advisory services to the fund so long as certain conditions are met.

[74] *See* MDFP Adopting Release, *supra* note 14, at 19054. Consistent with the preparation of the MDFP line graph, if a fund changes indexes, the fund would be required to explain the reasons for the change and provide information for both the newly selected and the former index.

[75] *See* Instruction 5 to proposed Item 5(b) (defining ''appropriate broad-based securities market index'). *See also* 1996 Profile Letter, *supra* note 16, at 3 (permitting a fund, at its option, to compare its returns to those of an appropriate broad-based securities market index).

[76] If an additional index is included, the fund would be required to discuss the additional index in the narrative explanation accompanying the bar chart and table. Instruction 2(b) to proposed Item 2(c)(2).

[77] Other commenters have suggested different ways to provide comparative return information. *See* Letter from John C. Bogle, Chairman of the Board, The Vanguard Group, to Jonathan G. Katz, Secretary, SEC, at 3 (July 28, 1995) (File No. S7–10–95) (recommending disclosure of fund and market index returns on a quarterly basis over a 10-year period); Letter from Daniel Pierce, Chairman of Board, Scudder, Stevens & Clark, Inc., to Jonathan G. Katz, Secretary, SEC, at 2 (July 28, 1995) (recommending that a fund's returns be compared to both a benchmark index (*e.g.*, the S&P 500) and a risk-free measure (*e.g.*, the yield on 3-month U.S. Treasury bills)); ICI Survey Letter, *supra* note 39, at 8–9 (recommending that a fund be permitted to show *either* a broad-based market index or an appropriate index of fund performance).

[78] Focus Group participants did not express a preference as to the placement of this information in the bar chart or accompanying table.

[79] *See* Fee Table Adopting Release, *supra* note 14, at 3194.

[80] *Id.* (also noting that the Example provides information about the cost of a fund investment).

[81] Like the current Form, the proposed amendments would require a fund that charges sales loads on reinvested dividends to disclose that these loads are not reflected in the Example and that, if the loads were included, the expenses reflected in the Example would be higher. Instruction 4(d) to proposed Item 3 would require this disclosure to *follow* the Example to avoid informing investors about what is not included in the Example before they have an opportunity to review what is included.

[82] *See* proposed Item 3. Instruction 4(a) to proposed Item 3 also would permit a fund to adjust the expenses included in the Example to reflect the completion of the amortization period for expenses associated with the initial organization of the fund. *See* Money Market Fund Prospectus Release, *supra* note 14, at 38458 (proposing this change).

[83] *See* Letter from John C. Bogle, Chairman of the Board, The Vanguard Group, to Barry P. Barbash, Director, Division of Investment Management, SEC (Sept. 16, 1996) (suggesting that few investors have as little as $1,000 invested in a given fund, and that the average fund investment typically amounts to $10,000–25,000, with the median investment probably in the range of $6,000–7,000).

hypothetical initial account value used in the MDFP line graph.[84]

The Commission requests comment on the proposed amendments. The Commission also requests comment whether the Example communicates useful information to investors and, specifically, whether the Example should continue to be required. The Commission requests comment about other ways to provide information that investors can use to compare the costs of fund investments.

b. Shareholder Account Fees

Instructions to the fee table require a fund to include, under the caption ''Other Expenses,'' fees that are charged to all shareholder accounts.[85] Funds that have account fees (*e.g.*, account maintenance fees) typically charge these fees as a fixed dollar amount and disclose the fees in a separate line item to the fee table.[86] Because account fees are paid directly by shareholders and are not fund operating expenses, the proposed amendments would create a new line item in the shareholder transaction section of the fee table that would describe the type of account fees charged by a fund.[87] Like the fee table requirements applicable to sales loads, the proposed amendments would require a fund to show the maximum account fee imposed.[88]

c. Improving and Simplifying Fee Table Presentation

Fee Table Narrative. Form N–1A requires a fund to provide a narrative description following the fee table explaining the purpose of the table.[89] To help investors use the information presented, the proposed amendments would require the narrative explanation to appear before (rather than after) the fee table and to include disclosure to the following effect:

This table describes the fees and expenses you may pay in connection with an investment in the fund.

New Fee Table Headings and Captions. The fee table is divided into two sections: ''Shareholder Transaction Expenses'' and ''Annual Fund Operating Expenses.'' Captions beneath the two general headings list the fees that make up transaction and operating expenses. The general heading for the shareholder transaction section of the fee table refers to shareholder transaction ''expenses'' and captions underneath this heading refer to sales ''loads'' and redemption and exchange ''fees.'' The proposed amendments would revise the shareholder transaction section so that the general heading and captions consistently refer to ''fees.'' As a result of this change, captions relating to sales loads would refer to ''sales fees.'' Since some investors are familiar with the term ''load'' and many funds use the term ''no load'' in marketing materials, however, these captions would include the term ''load'' in parentheses (*e.g.*, ''Maximum Sales Fee (Load) Imposed on Purchases').[90]

The proposed amendments also would revise the caption ''12b-1 Fees,'' which includes any distribution and other expenses a fund pays under a rule 12b-1 plan.[91] The proposed amendments would change the caption to ''Marketing (12b-1) Fees.''[92] Retaining the designation ''12b-1'' would enable investors familiar with rule 12b-1 plans to identify those fees in the fee table. The Commission requests comment whether another caption (*e.g.*, ''Distribution (12b-1) Fees'') would be more appropriate.

To help explain the difference between the fees paid by shareholders and expenses paid by the fund, the proposed amendments would require the following parentheticals after each heading: ''Shareholder Fees (fees paid directly from your account)'' and ''Annual Fund Operating Expenses (expenses that are deducted from the fund's assets).''[93]

Fee Schedules. Instructions to the fee table permit a fund to include a tabular presentation within the fee table that shows a range of deferred sales loads over time and a range of exchange fees.[94] Since the presentation of a table within the larger fee table tends to complicate the fee disclosure and may discourage investors from reviewing the information presented, the proposed amendments would no longer permit this disclosure in the fee table. Like the current Form, the proposed amendments would continue to permit a fund to explain the range of deferred sales loads or exchange fees in a footnote.[95]

Expense Reimbursement and Fee Waiver Arrangements. Instructions to the fee table require a fund that has an expense reimbursement or fee waiver arrangement to reflect the arrangement in the fee table if the reimbursement or waiver will continue.[96] The proposed amendments would clarify that a fund is required to reflect expense reimbursement and fee waiver arrangements without regard to whether the arrangement has been guaranteed for a full fiscal year.[97] This approach is intended to assure that investors are informed about decreases in expense reimbursement and fee waiver arrangements that could affect the fund's performance.

Other Expenses. Instructions to the fee table permit a fund to subdivide the line item for ''Other Expenses'' into 3 subcategories of its own choosing.[98] Since some funds identify the fees that make up this line item by adding a parenthetical following the ''Other Expenses'' caption, the proposed amendments would permit a fund to

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[84] *See* proposed Item 5(b).

[85] Instruction 10 to Item 2(a).

[86] Certain funds charge shareholder account fees as a percentage of assets invested. A small number of funds charge account fees based on the fund's average net assets.

[87] Instruction 2(d) to proposed Item 3. This Instruction would address when account fees must be included in the fee table. For example, account fees would be required in the fee table even if a fund waived the fees for certain shareholders, such as employees of the fund's investment adviser and investors with large account balances. In certain circumstances, case-by-case determinations would continue to be made regarding the inclusion (or exclusion) of account fees from the fee table based on the number and type of shareholders subject to the fee and the services provided.

[88] If an account fee is charged only to accounts that do not meet a certain threshold (*e.g.*, accounts under $2,500) or if an account fee is non-recurring (*e.g.*, it is paid to open or close an account), a fund would be permitted to disclose the threshold or the type of fee imposed in a parenthetical to the caption or in a footnote to the fee table.

In computing the expenses shown in the Example, Instruction 4(d) to proposed Item 3 would allow the allocation of account fees when they are charged to invest in more than one fund. *See* Money Market Fund Prospectus Release, *supra* note 14, at 38461 (proposing this change). In addition, a fund that charges account fees based on a minimum investment requirement would be permitted to prorate its account fees for purposes of the Example if the fund's minimum account requirement exceeds $10,000 (the proposed hypothetical investment). For instance, adjusting an account fee of $100 to $50 would be appropriate to avoid overstating the fee in the Example when the fund's minimum investment requirement is $20,000.

[89] Instruction 1 to Item 2(a).

[90] *See* ICI Survey Letter, *supra* note 39 (changing the caption from ''sales load'' to ''sales charge,'' without using the term ''load').

[91] 17 CFR 270.12b-1.

[92] Focus Group participants indicated that the term ''marketing fees'' would help them understand the expenses included in the line item.

[93] *See* ICI Survey Letter, *supra* note 39 (enclosing a prototype profile that includes similar explanatory information).

[94] Instructions 5 and 7 to Item 2(a).

[95] Instructions 2(a)(i) and 2(c) to proposed Item 3. The GCLs require a fund to disclose wire redemption charges in a footnote to the fee table. 1991 GCL, *supra* note 28, at II.G. Given the small amount of these fees (typically $5 to $10 per redemption) and since these fees are charged only when shareholders elect to receive redemption proceeds by wire, the proposed amendments would not *require* disclosure of wire redemption charges in the fee table. A fund may include this disclosure in a footnote to the table or together with other prospectus disclosure regarding redemption procedures.

[96] Instruction 13 to Item 2(a).

[97] Instruction 3(e) to proposed Item 3. *See* Money Market Fund Prospectus Release, *supra* note 14, at 38458 (proposing this clarification).

[98] Instruction 10(b) to Item 2(a).

identify the expenses that comprise this line item *either* under separate subcaptions or in a parenthetical following the ''Other Expenses'' caption.[99] When subcaptions are provided, the proposed amendments would clarify that the subcaptions must identify the 3 largest expenses that comprise ''Other Expenses.''

4. Item 4—Investment Strategies and Risk Disclosure

Prospectus disclosure about fund investments and risks typically consists of descriptions of each type of security in which a fund may invest and the risks associated with those securities. The investments described often include instruments, such as illiquid securities, repurchase agreements, and options and futures contracts, that do not have a significant role in achieving a fund's investment objectives. Disclosing information about each type of security in which a fund might invest does not appear to help investors evaluate how the fund's portfolio will be managed or the risks of investing in the fund. This disclosure also adds substantial length and complexity to fund prospectuses, contributing to investor perceptions that prospectuses are too complicated and discouraging investors from reading a fund's prospectus.[100]

The Commission believes that prospectus disclosure would be more useful to investors if it emphasized the principal investment strategies of a fund and the principal risks of investing in the fund, rather than the characteristics and risks of each type of instrument in which the fund may invest.[101] Since funds are intended to offer investors professional investment management,[102] the focus of investment disclosure should be on the fund's investment objectives and the principal means used by the fund's adviser to achieve those objectives. Consistent with this view, the proposed amendments seek to encourage prospectus disclosure that would help investors understand how a fund's portfolio will be managed. The proposed amendments are designed to be consistent with, and to implement more effectively, the Commission's intention in adopting Form N–1A that the prospectus should describe a fund's ''fundamental characteristics.'' [103]

a. Investment Objectives and Implementation of Investment Objectives

To assist investors in identifying funds that meet their investment needs, the proposed amendments, like the current Form, would require prospectus disclosure of a fund's investment objectives.[104] The proposed amendments, however, would change the disclosure requirements regarding how a fund intends to achieve its investment objectives. Form N–1A currently requires a fund to disclose the types of securities in which it invests or will invest principally as well as any ''special investment practices and techniques'' that will be used in connection with investing in those securities.[105] Form N–1A also requires disclosure about ''significant investment policies or techniques'' that a fund intends to use, subject to certain limitations.[106]

One of those limitations directs a fund to limit prospectus disclosure about practices that place no more than 5% of a fund's assets at risk.[107] Many funds disclose in their prospectuses information about securities and investment practices that do not and may not ever place more than 5% of a fund's assets at risk, often to retain the flexibility to exceed the 5% threshold in the future.[108]

The proposed amendments would eliminate the 5% standard. Instead, the revised Form would require a fund to disclose in the prospectus the principal strategies to be used to achieve its investment objectives, including the particular type or types of securities in which the fund will invest principally.[109] This approach is designed to shift prospectus disclosure away from an inventory of the various investments a fund may make and to focus disclosure on a fund's overall portfolio management. Whether a particular strategy (including a strategy to invest in a particular type of security) would constitute a principal strategy that must be disclosed in the fund's prospectus would depend upon the strategy's anticipated importance in achieving the fund's investment objectives and how the strategy affects the fund's potential risks and returns.[110] In determining what is a principal strategy, a fund would consider, among other things, the amount of assets expected to be committed to the strategy, the amount of assets expected to be placed at risk by the strategy, and the likelihood of losing some or all of those assets.[111] The proposed amendments would require disclosure about non-principal strategies to appear in the SAI.[112]

Focusing disclosure requirements on a fund's principal strategies is intended to improve prospectus disclosure by eliminating the need for disclosure about securities and strategies that do not have an important role in achieving the fund's investment objectives. Under the revised Form, for example, it generally would be unnecessary to include in the prospectus disclosure about a fund's cash management

[99] Instruction 3(c)(iii) to proposed Item 3.

[100] *See* Money Market Fund Prospectus Release, *supra* note 14, at 38456 (giving examples of lengthy and technical disclosure about portfolio holdings frequently found in money market fund prospectuses).

[101] The ICI has recommended that prospectus disclosure focus primarily on a fund's broad investment objectives, practices, and associated risks, and not on particular types of securities in which the fund invests. *See, e.g.*, Letter from Paul Schott Stevens, General Counsel, ICI, to Jonathan G. Katz, Secretary, SEC, at 4–6 (July 28, 1995) (''1995 ICI Risk Comment Letter'); Letter from Amy B.R. Lancellotta, Associate Counsel, ICI, to C. Gladwyn Goins, Associate Director, Division of Investment Management, SEC, at 7 (Mar. 7, 1995) (''1995 ICI Disclosure Letter').

[102] *See, e.g.*, 1 T. Lemke, G. Lins & A.T. Smith III, Regulation of Investment Companies § 1.01, at 1–1 (1996).

[103] *See* Form N–1A Proposing Release, *supra* note 13, at 815; Form N–1A Adopting Release, *supra* note 12, at 39729. *See also* Money Market Fund Prospectus Release, *supra* note 14 (proposing amendments that would permit money market funds to include in their prospectuses ''basic, general statements about their investment objectives and portfolio composition'').

[104] Proposed Item 4(a). A fund may refer to its investment objectives as investment goals. If a fund's investment objectives can be changed without a shareholder vote, the proposed amendments would continue to require disclosure of this fact in the prospectus. Although not required by Form N–1A, some funds disclose in the prospectus that their investment objectives may *not* be changed without a shareholder vote. Since investors generally do not expect fund investment objectives to change, this disclosure does not appear to help investors evaluate and compare funds. This disclosure would be moved to the SAI and proposed Item 12(c)(1)(vii) would require a fund to disclose when its investment objectives may not be changed without a shareholder vote.

[105] Item 4(a)(ii)(B)(1).

[106] Item 4(a)(ii)(D).

[107] Item 4(b)(ii). Item 4(b)(i) directs a fund not to disclose so-called ''negative'' practices (*i.e.*, practices in which a fund may not or does not intend to engage). Instruction 3 to proposed Item 4(b)(1) would retain this limitation by providing that a negative strategy is not a principal strategy. Avoiding disclosure about negative strategies should help keep prospectus disclosure focused on what the fund will do to achieve its investment objectives, rather than on what the fund will not do.

[108] A fund, within a short period of time, may increase its holdings of a particular type of security from less than 5% of its assets to more than 5%, which, under the current Form, requires a different level of disclosure about the security. To avoid having to amend their prospectuses in response to changes in portfolio holdings, many funds include information in their prospectuses about any security or strategy that might at some point place more than 5% of the fund's assets at risk.

[109] Proposed Item 4(b)(1). A bond fund, for example, typically would discuss the maturities, durations, ratings, and issuers of the bonds in which the fund principally invests.

[110] Instruction 1 to proposed Item 4(b)(1) would define a strategy to include any policy, practice, or technique used to achieve a fund's investment objectives.

[111] Instruction 2 to proposed Item 4(b)(1).

[112] Proposed Item 12(b).

practices (*e.g.*, entering into overnight repurchase agreements) since these practices are not typically among a fund's principal strategies.[113]

To further focus prospectus disclosure on a fund's principal strategies, the proposed amendments would require the prospectus to explain in general terms how the fund's adviser decides what securities to buy and sell.[114] This disclosure is intended to provide investors with general information about the fund's investment approach and how the fund's portfolio will be managed. The information might describe, for example, whether an equity fund emphasizes value or growth, or blends the two approaches, or whether the fund invests in stocks based on a ''top-down'' analysis of economic trends or a ''bottom-up'' analysis that focuses on the financial condition and competitiveness of individual companies.[115]

Concentration. Form N–1A requires a fund to disclose in its prospectus any policy to concentrate (*i.e.*, invest 25% or more of its total assets) in a particular industry or group of industries. The proposed amendments would retain this requirement since concentrating in an industry or group of industries is likely to be a principal strategy in achieving a fund's investment objectives.[116] The proposed amendments also would continue to require a single state money market fund to discuss its concentration in securities issued by a particular state or by issuers located within a state.

Temporary Defensive Positions. Many funds adopt policies permitting them to take ''temporary defensive positions'' to avoid losses in response to adverse market, economic, political, or other conditions. When a fund assumes a temporary defensive position, the fund may depart from its usual investment strategies without a shareholder vote or specific notice to shareholders. The GCLs require a fund to disclose, if applicable, certain information about the possibility of taking temporary defensive positions.[117]

The proposed amendments would continue to require disclosure about temporary defensive positions to alert investors of potential changes in a fund's investments.[118] In particular, the proposed amendments would require a fund to disclose the percentage of its assets that may be committed to temporary defensive positions (*e.g.*, up to 100% of the fund's assets), the risks, if any, associated with the positions, and the likely effect of these positions on the fund's performance. The Commission requests comment on requiring this information given the temporary nature of defensive positions and the proposed approach of focusing prospectus disclosure on a fund's principal strategies.[119]

Portfolio Turnover. The Guides require a fund that has had in the past year, or anticipates having, a portfolio turnover rate of approximately 100% or more to disclose in the prospectus any tax and brokerage consequences that will result from the fund's ''high'' portfolio turnover rate.[120] The proposed amendments would require prospectus disclosure only when a fund anticipates having a portfolio turnover rate of 100% or more in the coming year.[121] This approach is designed to focus prospectus disclosure on a fund's expected portfolio practices, not past practices.[122]

The proposed amendments would require disclosure of the fund's anticipated portfolio turnover rate and what that rate means (*e.g.*, that a portfolio turnover rate of 200% is equivalent to the fund buying and selling all of the securities in its portfolio twice in the course of a year).[123] Disclosing the anticipated turnover rate and explaining its meaning are intended to enable investors to evaluate how actively a fund buys and sells portfolio securities and to compare the anticipated portfolio turnover rates of different funds.

The proposed amendments also would require a fund to explain the tax consequences to shareholders of the fund's high portfolio turnover rate. In addition, the proposed amendments would require a fund to explain how trading costs associated with the fund's high portfolio turnover may affect the fund's performance.

The Commission requests comment on the proposed requirements. In particular, the Commission requests comment whether a fund with a portfolio turnover rate of 100% should be viewed as having a high portfolio turnover rate. An informal review by the Division of fund portfolio turnover rates suggests that nearly half of all funds have portfolio turnover rates exceeding 100%. The Commission also requests comment whether specific information about portfolio turnover should be required in connection with prospectus disclosure about a fund's investment strategies. In response to current disclosure requirements, for example, funds often make generic statements that do not appear to help investors evaluate and compare fund investments.[124]

Classification and Subclassification. All funds that register on Form N–1A are classified as management companies and subclassified as open-end companies under sections 4 and 5 of the Investment Company Act.[125] Funds may be further subclassified as diversified or non-diversified under section 5. Form N–1A requires a fund to disclose its classification and subclassifications in the prospectus.[126]

The proposed amendments would move to the SAI disclosure about a fund's legal status as an open-end management company.[127] This information is technical and repetitive of information required to be disclosed in the prospectus. A fund's classification as a management company is communicated to investors through

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[113] Similarly, in most cases, a fund would be able to move to the SAI disclosure about hedging strategies that limit downside risk, securities lending, purchasing securities on a ''when-issued'' basis, short selling ''against the box'' to defer recognition of gains or losses, and investing in illiquid or restricted securities, since these strategies typically are not principal strategies.

[114] Proposed Item 4(b)(2). The prospectus of a value-oriented fund might state, for example, that the fund's adviser selects stocks it considers to be undervalued by recognized measures of economic value such as earnings, cash flow, and book value. A growth and income fund might state that it invests in the stock of issuers whose earnings have increased from year to year and issuers that have paid dividends continuously for a certain period of time.

[115] Because proposed Item 4(b)(2) would require the prospectus to explain *in general terms* how the fund's adviser decides what securities to buy and sell, a fund (or its adviser) would not be required to provide proprietary information about its investment strategies.

[116] Proposed Item 4(b)(3).

[117] 1994 GCL, *supra* note 28, at II.E.

[118] Proposed Item 4(e). *See also* Fund Names Release, supra note 2 (permitting a fund with a name suggesting that the fund focuses on a particular type of investment to make other investments while assuming a temporary defensive position).

[119] In light of these considerations, the revised Form, unlike the 1994 GCL, *supra* note 28, would not require a fund to disclose the types of securities in which it may invest while taking a temporary defensive position.

[120] Guide 5.

[121] Proposed Item 4(b)(4). A fund that expects its portfolio turnover rate to be less than 100% would continue to be required to disclose the anticipated rate of its portfolio turnover in the SAI. As under the current requirements, a money market fund would not be required to discuss portfolio turnover in either the prospectus or the SAI. *See* MDFP Adopting Release, *supra* note 14, at 19051 n.3.

[122] Information about a fund's portfolio turnover rate in previous fiscal years is disclosed in the financial highlights table. *See* proposed Item 9.

[123] Like any other fund, a ''balanced'' fund would discuss its anticipated turnover rate with respect to its entire portfolio. Guide 5, in contrast, requires a balanced fund to discuss portfolio turnover separately for the stock and bond portions of the fund's portfolio.

[124] Prospectuses, for example, state that high portfolio turnover rates will likely result in higher transaction costs and may increase taxable gains.

[125] *See* 15 U.S.C. 80a–4, –5.

[126] Item 4(a)(i)(B).

[127] Proposed Item 12(a).

disclosure about the fund's investment adviser and portfolio management. A fund's open-end status is communicated through disclosure about the redeemability of the fund's shares.

The proposed amendments also would move to the SAI disclosure that a fund is diversified under section 5. Since most funds are diversified, this information (which often includes a technical description of the diversification requirements under the Investment Company Act) does not appear to provide investors with useful information about a particular fund. A non-diversified fund would continue to be required to disclose its non-diversified status in the prospectus.[128] To avoid technical disclosure, the proposed amendments would require a non-diversified fund to describe the effects of non-diversification (*e.g.*, by indicating that, compared to diversified funds, the fund may invest a greater percentage of its assets in a particular issuer) and to disclose the risks of investing in the fund.

Section 8 Policies. Section 8 requires a fund to disclose in its registration statement the fund's policies with respect to borrowing money, issuing senior securities, underwriting securities issued by other persons, investing in real estate or commodities, and making loans.[129] Most funds do not engage in these practices to a significant extent, because the Investment Company Act limits their use by funds.[130] Although they are not required to do so, some funds disclose in the prospectus their policies with respect to the practices identified under section 8.[131] To provide a clearer directive to disclose this information in the SAI, the proposed amendments specifically would require disclosure about these policies in the SAI.[132]

b. Risk Disclosure

Risk disclosure in fund prospectuses typically consists of detailed, and often technical, descriptions of the risks associated with particular securities in which a fund may invest. Just as disclosure about each type of security in which a fund may invest does not appear to effectively communicate how the fund's portfolio will be managed, disclosure about the risks associated with each type of security in which the fund may invest does not appear to effectively communicate the overall risks of investing in the fund. Disclosing the risks of each portfolio investment, rather than the overall risks of investing in a fund, does not appear to help investors evaluate a particular fund or compare the risks of different funds.

Consistent with the proposal to shift prospectus disclosure away from an inventory of the various securities that may be held by a fund, the proposed amendments would revise Form N–1A to shift prospectus disclosure away from the risks associated with specific securities. The revised Form would require a fund to disclose the risks to which the fund's particular portfolio as a whole is expected to be subject.[133] As part of this disclosure, a fund would be required to discuss the circumstances that are reasonably likely to affect adversely the fund's net asset value, yield, or total return.

The proposed approach is intended to improve fund risk disclosure. Comments from both individual investors and members of the fund industry responding to the Risk Concept Release strongly supported improving narrative discussions of fund risks. In a survey of fund investors sponsored by the ICI (''ICI Risk Survey''), respondents were asked to consider various methods that could be used to describe risk and expressed the greatest overall confidence about using narrative information.[134]

The Risk Concept Release requested comment whether quantitative risk measures, such as standard deviation, beta, and duration, would help investors evaluate and compare fund risks.[135] While more than half of the individual commenters and some industry members expressed a desire for some form of quantitative risk information, commenters did not broadly support any one risk measure. In addition, a number of commenters strongly opposed requiring disclosure of quantitative risk information.[136] These commenters, among other things, questioned the value of quantitative risk measures, suggesting that investors have too wide a range of investment goals and ideas of what ''risk'' means to be well-served by a single quantitative risk measure.[137] The ICI Risk Survey suggests that investors who use quantitative measures may not understand the measures well enough to use them for the special purposes for which they were designed.[138]

Based on these and other considerations, the Commission is not proposing at this time to require funds to use quantitative risk measures. The proposed prospectus risk/return summary and the proposed amendments to the narrative discussion of risk within the prospectus are designed to improve fund risk disclosure, without raising the issues associated with Commission-mandated quantitative information. The Commission's determination not to require quantitative risk information is not intended to suggest, however, that this information is not useful to some investors. Funds that wish to include quantitative risk disclosure in their prospectuses may continue to do so.

Item 5—Management's Discussion of Fund Performance

The proposed amendments would continue to require a fund to provide its MDFP and the related line graph comparing the fund's returns to a broad-based securities market index in either the prospectus or the annual report. The Division's review of and experience with MDFP disclosure indicates that the discussion of fund performance and the line graph have been successful in providing fund shareholders with useful, comparative information about a fund's performance. Other than technical and conforming changes, the proposed amendments would not modify these disclosure requirements.

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[128] Proposed Item 4(d).

[129] 15 U.S.C. 80a-8. Section 8 also requires a fund to disclose in the registration statement its policies on concentration and portfolio turnover, *see supra* note 121 and accompanying text, and any other policies that the fund deems fundamental or that may not be changed without shareholder approval.

[130] *See, e.g.*, section 18(f) (15 U.S.C. 80a-18(f)) (limiting a fund's ability to issue senior securities and borrow money); section 12(c) (15 U.S.C. 80a-12(c)) (limiting the underwriting practices of a diversified fund).

[131] *See* Items 4(a)(ii)(C), 4(b); Guides 3, 14.

[132] Proposed Item 12(c). If a policy specified in section 8 is a principal strategy, Instruction 4 to proposed Item 4(b)(1) would require the fund to disclose the policy in the prospectus.

[133] Proposed Item 4(c). *See supra* note 101. The requirement that a fund disclose the risks to which its *particular* portfolio as a whole is subject is intended to elicit risk disclosure specific to that fund. In meeting this requirement, a growth fund, for example, would have to disclose the risks of the growth stocks in which the fund invests as opposed to describing the general risks of equity securities.

[134] ICI Risk Survey, *supra* note 26, at 21, 37.

[135] Risk Concept Release, *supra* note 18, at 17176. Standard deviation measures the volatility of a fund's total return; beta measures the sensitivity of a fund's total return to the market's performance; and duration measures the sensitivity of a bond fund's return to changes in interest rates. *Id.* at 17174–76.

[136] *See, e.g.*, 1995 ICI Risk Comment Letter, *supra* note 101, at 10–16 (questioning, among other things, the feasibility of developing a single, all-encompassing measure of fund risks and whether quantitative information would be understood and accurately used by fund investors).

[137] *See also* P. Bernstein, Against the Gods: The Remarkable Story of Risk 269–303 (1996) (suggesting it is inaccurate to assume that investors evaluate investments based on risk and return and that investors' attitudes towards risk may overrule a decision that may be appropriate based on quantitative measures).

[138] ICI Risk Survey, *supra* note 26, at 14–18 (*e.g.*, 45% of respondents who had used duration, 44% of those who used standard deviation, and 23% of those who used beta reported using these measures to estimate future performance).

Funds typically include the MDFP in their annual reports, rather than in their prospectuses, which may be, in part, due to the relevance of the MDFP to other current financial information appearing in annual reports. As a result of recent legislation, the Commission has more flexibility to specify the content of annual reports and to require additional disclosure in annual and semi-annual reports as necessary or appropriate in the public interest or for the protection of investors.[139] The Commission is not proposing to modify fund shareholder report disclosure requirements in this release, but recognizes that revisions to shareholder report requirements could further enhance the disclosure provided to fund investors. The Division currently is evaluating whether funds should be required to include the MDFP in the annual report. The Division also is considering whether certain disclosure required by Form N–1A would be more useful to investors in shareholder reports. An ''integrated'' approach to registration and reporting requirements could improve the overall information about a fund available to investors.[140] Shareholder reports, for example, could disclose information about a fund's investments and operations for a current period (such as information about the fund's portfolio turnover or the tax consequences of investing in the fund). Fund prospectuses could disclose more general information about the fund's intended investments and operations (such as its investment objectives, anticipated risks, and fees). The Commission requests comment on specific prospectus disclosure that could be more appropriately disclosed in a fund's shareholder reports.

[139] National Securities Markets Improvement Act of 1996, Pub. L. No. 104–290 (1996) (the ''1996 Securities Act''), section 206(f) (amending section 30 of the Investment Company Act (15 U.S.C. 80a–29)] to add new paragraph (f)).

[140] In the past, the concept of ''integrated'' disclosure for funds has addressed eliminating duplicative registration requirements under the Investment Company Act and the Securities Act. *See* Investment Company Act Release No. 10378 (Aug. 28, 1978) (43 FR 39548) (''Integrated Registration Statement Release'') (adopting integrated registration statements for funds and closed-end investment companies by replacing separate registration statement forms under the Investment Company Act and Securities Act). New ''integrated'' disclosure initiatives for funds could expand the concept of integrated disclosure to include an approach similar to that adopted for corporate issuers, which integrates registration statement disclosure requirements with periodic reports. *See* Securities Act Release Nos. 6235 (Sept. 2, 1980) (45 FR 63693) and 6383 (Mar. 3, 1982) (47 FR 11386) (proposing and adopting new forms for the offering of securities under the Securities Act).

Item 6—Management, Organization, and Capital Structure

a. Management and Organization

The proposed amendments would streamline the current disclosure requirements concerning a fund's management and organization. Consistent with the intent of Form N–1A to provide investors with essential information about a fund, the revised Form would require prospectus disclosure about the fund's investment adviser, the advisory fee paid by the fund, and the person or persons primarily responsible for the day-to-day management of the fund's portfolio.[141] As in the current Form, the revised Form would require prospectus disclosure of fees paid to any sub-adviser.[142] The Commission requests comment whether information about individual sub-advisory fees helps investors evaluate and compare fund investments or whether this disclosure obscures the aggregate investment advisory fee associated with investing in a particular fund. The Commission requests specific comment whether a fund should be required to disclose only the fund's aggregate investment advisory fee.

The revised Form would continue to require prospectus disclosure of any material pending legal proceedings involving the fund, investment adviser, or principal underwriter, which would be incorporated in the management and organization Item because the disclosure is related to the other management information required to be disclosed.[143] The proposed amendments would modify or move to the SAI other disclosure requirements relating to the management and organization of a fund because this information generally is common to all funds and does not appear to assist an investor in evaluating a particular fund or comparing different funds.

Board of Directors. Form N–1A requires a fund's prospectus to include a brief description of the responsibilities of the fund's board of directors under the applicable laws of the jurisdiction where the fund is organized.[144] The proposed amendments would move this disclosure to the SAI.[145] The responsibilities of fund directors are governed by the Investment Company Act and state law.[146] The summary, generic disclosure typically provided in fund prospectuses about the responsibilities of directors does not appear to assist an investor in deciding whether to invest in a particular fund.

The Commission requests comment whether disclosure in the prospectus of the names, experience, and compensation of a fund's directors, along with an address, telephone number, or other means to contact the directors would be more useful to investors. The Commission also requests comment whether this information should be given only for a fund's independent directors, accompanied by disclosure of the number of independent directors in relation to the number of directors on the fund's board.[147] The Commission requests specific comment whether information about a fund's directors is essential information that should be required to be disclosed in the prospectus to assist investors in deciding whether to invest in a fund. The Commission also requests specific comment whether information about the compensation paid to directors warrants prospectus disclosure in light of the relatively small portion of a fund's total expenses represented by director compensation.

Controlling Persons. Form N–1A requires disclosure of the name of any person that controls the fund's investment adviser and the name of any person that controls the fund.[148] The proposed amendments would no longer

[141] Proposed Items 6(a)(1), (2).

[142] *See* section 2(a)(20) (15 U.S.C. 80a–2(a)(20)) (defining ''investment adviser'' to include a sub-adviser).

[143] Item 9. The legal proceedings disclosure is intended to be substantially the same as Item 103 of Regulation S–K under the Securities Act (17 CFR 229.103) and would be modified to conform to Item 103. *See* Investment Company Act Release No. 19155 (Nov. 30, 1992) (57 FR 56862) (modifying Form N–2 to conform to Item 103).

[144] Item 5(a).

[145] Proposed Item 13(a).

[146] These responsibilities include, among other things: (i) Evaluating and approving the fund's investment advisory and principal underwriting contracts (sections 15 (a), (c) (15 U.S.C. 80a–15 (a), (c))) and the use of fund assets to pay for the distribution of fund shares (rule 12b–1); (ii) selecting the fund's independent public accountants (section 32(a)(1) (15 U.S.C. 80a–31(a)(1))); and (iii) reviewing and approving transactions with affiliates under various rules (*e.g.*, rule 10f–3 (17 CFR 270.10f–3); rule 17a–7 (17 CFR 270.17a–7); rule 17e–1 (17 CFR 270.17e–1)). Directors have fiduciary duties to the fund and its shareholders under section 36(a) of the Investment Company Act (15 U.S.C. 80a–35(a)) and under state law. *See* 3 W. Fletcher, Cyclopedia of the Law of Private Corporations § 838 (rev. perm. ed. 1994); Hanson Trust PLC v. ML SCM Acquisition, Inc., 781 F.2d 264, 275 (2d Cir. 1986). *See also* Burks v. Lasker, 441 U.S. 471 (1979) (upholding the authority of independent directors to take actions under state law to the extent not inconsistent with the policies of the Investment Company Act and the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 *et seq.*) (the ''Advisers Act'')).

[147] Section 10(a) of the Investment Company Act (15 U.S.C. 80a–10(a)) requires that at least 40% of a fund's board of directors consist of individuals who are not ''interested persons,'' as defined in section 2(a)(19) (15 U.S.C. 80a–2(a)(19)).

[148] Items 5(b)(i) and 6(b).

require this information in the prospectus. Transactions between controlling persons and a fund are subject to restrictions under the Investment Company Act.[149] When transactions with controlling persons are permitted, a fund's board of directors is responsible for reviewing and approving the arrangements.[150] Disclosure about controlling persons of the investment adviser and the fund would continue to be available in the SAI.[151]

Affiliated Brokers. Form N–1A requires a fund to state, if applicable, that the fund engages in brokerage transactions with affiliated persons and allocates brokerage transactions based on the sale of fund shares.[152] The proposed amendments would no longer require this disclosure in the prospectus. The information called for by the Form typically results in disclosure that restates applicable legal requirements.[153] This type of generic disclosure does not appear to assist investors in deciding whether to invest in a particular fund. Payment of commissions to affiliated brokers is governed by section 17(e) of the Investment Company Act and rule 17e–1. In addition, the SAI requires disclosure about affiliated brokers and how brokers are selected to effect the fund's portfolio transactions.[154]

Form of Organization. Form N–1A requires disclosure about a fund's form of organization (along with the date) and state of incorporation.[155] Since most funds are organized in one of a few states as corporations or business trusts that seek to provide limited liability to their shareholders,[156] disclosure about a fund's organization does not appear to help investors evaluate a particular fund or compare different funds. The proposed amendments would move this disclosure to the SAI,[157] unless a fund is organized outside the United States and registered under the Investment Company Act pursuant to section 7(d).[158]

Expenses. Form N–1A requires a fund to provide a statement about its expenses.[159] The proposed amendments would no longer require this disclosure since it duplicates information about the fund's expenses required in the fee table. Expense information also would continue to be available in the fund's financial statements and SAI.[160]

b. Capital Structure

Form N–1A requires certain information to be disclosed in the prospectus about a fund's shares and capital structure. The proposed amendments would reorganize and revise these disclosure requirements consistent with the intent of Form N–1A to focus prospectus disclosure on essential information about a particular fund that would assist an investor in deciding whether to invest in that fund.

Transferability, Material Obligations, and Potential Liabilities. Form N–1A requires disclosure about any limits on the transferability of, and material obligations or potential liabilities associated with, a fund's shares. Funds rarely restrict share transferability and generally are organized as corporations or business trusts to provide limited liability to their shareholders. If, however, any restrictions or special liabilities applied to the purchase of a fund's shares, information about the restrictions or liabilities would appear to help an investor decide whether to invest in the fund. As a consequence, the proposed amendments would continue to require this information in the prospectus.[161] The Commission requests comment on the types and likelihood of restrictions and liabilities imposed on fund shares and on what disclosure, if any, should be required.

Shareholder Voting Rights. Form N–1A requires a fund to discuss shareholder voting rights and disclose if the rights of shareholders can be modified by other than a majority vote.[162] Because the Investment Company Act requires all fund shares to have equal voting rights [163] and prescribes the vote required for significant matters,[164] voting rights disclosure typically is generic and does not appear to assist investors in evaluating and comparing funds. The proposed amendments would move this disclosure to the SAI.[165]

Senior Securities. Form N–1A requires disclosure about any class of senior securities issued by a fund.[166] The proposed amendments would delete this requirement. Senior securities issued by funds are limited to borrowings, which are subject to significant legal restrictions under the Investment Company Act [167] and

[149] *See, e.g.*, section 17 (15 U.S.C. 80a–17) and rules 17a–6, 17d–1 (17 CFR 270.17a–6, .17d–1).

[150] *See supra* note 146.

[151] Items 14(a), 15(a)(1). In addition, information about any person who owns 10% or more of a fund's voting stock is required to be disclosed in a proxy statement seeking shareholder approval of the fund's investment adviser, which provides more timely information about the possibility that a person could influence the approval of the advisory contract. Item 22(c)(4) of Schedule 14A (17 CFR 240.14a–101) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (the ''Securities Exchange Act').

[152] Item 5(g).

[153] Some funds, for example, state that an affiliated broker may effect portfolio transactions for the fund on an exchange or board of trade, if the commissions, fees, or other remuneration received by the affiliated broker are reasonable and fair compared to the commissions, fees, or other remuneration paid to other brokers or futures commission merchants in connection with comparable transactions involving similar securities being purchased or sold on an exchange or board of trade during a comparable period of time. With respect to allocation of brokerage transactions, funds typically disclose that they may consider sales of fund shares as a factor in selecting brokers to execute portfolio transactions.

[154] Item 16. The Commission has undertaken initiatives designed to improve disclosure about fund brokerage transactions by requiring certain expenses paid by directed brokerage to be treated as an expense in a fund's financial statements and fee table and by requiring average commission rates to be disclosed in the financial highlights information. Investment Company Act Release No. 21221 (July 21, 1995) (60 FR 38918).

[155] Item 4(a).

[156] *See* SEC, Division of Investment Management, Protecting Investors: A Half Century of Investment Company Regulation, Investment Company Governance 275 (May 1992) (reporting that in 1991 over 84% of funds were organized as Maryland corporations or Massachusetts business trusts) (*citing* Lipper Analytical Services, The ''Form'' Used by Mutual Funds to Organize State by State (Mar. 1991) (survey prepared for the ICI)).

[157] Proposed Item 11(a). Information about a fund's operating history (including information about the lack of an operating history for a newly organized fund) would continue to be provided in the bar chart, performance table, and the fee table in the risk/return summary, and in the financial highlights information.

[158] 15 U.S.C. 80a–7(d). *See* proposed Item 6(b).

[159] Item 5(f).

[160] Item 15.

[161] For funds organized as business trusts under Massachusetts law, prospectuses sometimes include disclosure that, under Massachusetts law, fund shareholders may, under certain limited circumstances, be held personally liable as partners for the fund's obligations. In adopting Form N–1A, the Commission stated that disclosure of possible contingent shareholder liability under this form of organization should not be required if a fund believes that, because of arrangements to protect shareholders, the likelihood of loss or expense to shareholders is remote. Form N–1A Adopting Release, *supra* note 12, at 37933–34. *See* 3 T. Frankel, The Regulation of Money Managers 79 (1980) (for funds organized as Massachusetts business trusts, personal liability generally is considered remote). The Division's review of fund prospectuses indicates that certain funds include disclosure about Massachusetts business trusts and state that shareholder liability is remote. Funds should continue to evaluate whether this disclosure is necessary.

[162] Item 6 (a), (c).

[163] Section 18(i) (15 U.S.C. 80a–18(i))].

[164] *See, e.g.*, section 15(a) (approval of investment advisory contract); section 16(a) (15 U.S.C. 80a–16(a)) (election of directors); section 13(a) (15 U.S.C. 80a–13(a)) (changes in fundamental investment policies). *See also* section 2(a)(42) (15 U.S.C. 80a–2(a)(42)) (defining ''voting security'' and a ''vote of a majority of the outstanding voting securities'' for purposes of the Investment Company Act); rules 18f–2, 18f–3 (17 CFR 270.18f–2, –3) (specifying certain voting rights with respect to series funds and multiple class funds, respectively).

[165] Proposed Item 17(a).

[166] Item 3(b).

[167] Section 18(f)(1) (requiring, for example, asset coverage of at least 300% for bank borrowings).

required to be disclosed in a fund's financial statements.[168]

Fund Classes. Form N–1A requires disclosure about ''other classes'' of fund shares (excluding borrowings that are not senior securities).[169] The proposed amendments would delete this requirement. Funds are not permitted to issue other classes of shares except for series funds under section 18f–2 and related rule 18f–2, and multiple class funds under rule 18f–3. When a series or class is offered in the prospectus, disclosure about the series or class would be required to be given.

7. Item 7—Shareholder Information

Form N–1A requires prospectus disclosure about a fund's purchase and redemption procedures, dividends and distributions, and the tax consequences of investing in the fund. While most of these disclosure requirements would remain substantially the same, the proposed amendments would make certain revisions, particularly with respect to tax disclosure, to focus this disclosure on essential information about a fund.[170]

a. Purchase and Redemption

Pricing of Fund Shares. Form N–1A requires a fund to explain that the price of fund shares is based on the fund's net asset value and to identify the methods used to value the fund's assets.[171] The proposed amendments would no longer require this information in the prospectus because it does not appear to assist investors in deciding whether to invest in a particular fund. The pricing of fund shares and the valuation of portfolio securities are technical, subject to legal requirements, and disclosed in the SAI.[172]

The proposed amendments would continue to require a fund to state when calculations of net asset value are made and that the price at which a purchase is effected is based on the next calculation of net asset value after the order is placed. A fund also would continue to be required to identify in a general manner any national holidays when shares will not be priced and to identify specifically any additional local or regional holidays when the fund will be closed.[173]

Although not specifically required, many funds disclose in their prospectuses how net asset value is determined. Funds, for example, often disclose that net asset value equals assets minus liabilities divided by the number of outstanding shares.[174] Although this disclosure tends to be generic because the calculation of net asset value is the same for all funds, the Commission requests comment whether disclosure about what constitutes net asset value would be helpful to investors.

Principal Underwriter. Form N–1A requires a fund to disclose the name and address of the fund's principal underwriter, and whether any affiliated person of the principal underwriter is an affiliated person of the fund.[175] This information would be moved to the SAI because it does not appear to provide investors with essential information that would assist them in deciding whether to invest in a particular fund.[176] The name and address of the underwriter typically are not necessary for investors to purchase and redeem a fund's shares.[177] The fund's board of directors is responsible for approving the fund's contract with the principal underwriter. Conflicts of interest that could influence transactions between a principal underwriter and a fund are governed by legal protections in the Investment Company Act.[178]

Service Providers. Form N–1A requires a fund to disclose the identity of any person (other than the investment adviser) who provides significant administrative or business management services for the fund (*e.g.*, an administrator), including a description of, and the fees paid for, the services.[179] The Form also requires the name and address of the fund's transfer agent and dividend paying agent.[180] The proposed amendments would move this disclosure to the SAI.[181] While a fund could include in the prospectus information about its service providers in describing the fund's purchase and redemption procedures, disclosure about persons that perform administrative or ''back-office'' functions unrelated to the purchase and sale of fund shares does not appear to assist investors in evaluating and comparing fund investments. The fund's investment adviser or board of directors is responsible for overseeing the fund's contractual arrangements with service providers and their costs to the fund. In addition, the costs incurred for services provided to the fund are included in the prospectus fee table and in the fund's financial statements.[182]

Account Transfers. The GCLs require certain information about transfers of shares held in street name accounts.[183] This disclosure would be retained in a simplified form in the prospectus. In particular, the proposed amendments would require a fund to disclose any restrictions on, or costs associated with, transferring shares held in street name to inform investors holding shares in street name about these restrictions and costs.[184]

b. Tax Consequences

General Tax Disclosure. Form N–1A requires a fund to describe in its prospectus the tax consequences of an investment in the fund.[185] Prospectus tax disclosure often includes lengthy information about the tax treatment of the fund and, in some cases, the tax treatment of specific securities held by

[168] The financial statement requirements in Regulation S–X specify that a fund disclose in its balance sheet any amounts payable to banks and others for borrowings. Rule 6–04 of Regulation S–X (17 CFR 210.6–04).

[169] Item 6(d).

[170] Information about purchase and redemption procedures typically takes up a number of pages in fund prospectuses and may contribute to the perception that prospectuses are too long and complicated. At the same time, this disclosure (*e.g.*, information on dividend reinvestment plans, automatic investment programs, and checkwriting privileges) appears to be included in prospectuses in response to investor interest in the information.

[171] Item 7(b)(i).

[172] Item 19(b). A fund's securities are required to be valued based on market quotations or, in the absence of market quotations, at fair value as determined by the board of directors. *See* section 2(a)(41) (15 U.S.C. 80a–2(a)(41)) (defining ''value''). *See also* rule 2a–7 (regarding the amortized cost method of valuation for money market funds).

[173] *See* Guide 28; proposed Item 7(a)(2). The Instruction to proposed Item 7(a)(2) would incorporate the disclosure required by Guide 28 concerning funds with portfolio securities listed on foreign exchanges that trade on weekends and U.S. holidays. If a fund does not price on days when foreign securities are traded, the Instruction would require the fund to disclose in the prospectus that the net asset value of the fund's shares may change on days when shareholders cannot purchase or redeem fund shares.

[174] *See* section 2(a)(41) (15 U.S.C. 80a–2(a)(41)) and rule 2a–4 (17 CFR 270.2a–4).

[175] Item 7(a).

[176] Proposed Item 15(b).

[177] Fund investors often effect purchases and redemptions through financial intermediaries (such as broker-dealers and banks) without the involvement of the fund's underwriter. When information about the underwriter is necessary to effect purchase and redemption requests, a fund would disclose this information in the prospectus in connection with the description of how to purchase and redeem the fund's shares.

[178] *See supra* note .

[179] Item 5(d).

[180] Item 5(e).

[181] Proposed Item 15(h). In addition, Item 5(b)(ii) requires a statement, if applicable, that the investment adviser is responsible for overall management of the fund's business. This disclosure would be provided in the SAI in response to proposed Item 15(c)(1).

[182] Rule 6–07 of Regulation S-X (17 CFR 210.6–07); Instruction 3(c) to proposed Item 3.

[183] 1990 GCL, *supra* note 28, at II.D.

[184] Proposed Item 7(b)(7).

[185] Item 6(g). Form N–1A provides guidance about the tax disclosure to be provided in the prospectus, indicating, among other things, that if a fund intends to qualify under Subchapter M of the Internal Revenue Code (I.R.C. 851 *et seq.*), the fund should state that it will distribute all of its net income and gains to shareholders and that these distributions are taxable.

a fund.[186] This disclosure tends to obscure information about the tax treatment of a fund's distributions and the direct tax consequences to investors of investing in the fund.

The proposed amendments would revise the tax disclosure required in fund prospectuses. In particular, the proposed amendments would require information about a fund's qualification under Subchapter M of the Internal Revenue Code to appear in the SAI.[187] Subchapter M confers pass-through tax treatment for funds that meet certain conditions.[188] Disclosure about Subchapter M, which relates to the tax treatment of the fund, does not appear to help investors evaluate the tax consequences of investing in the fund. In addition, because virtually all funds qualify for pass-through tax treatment, disclosure about the conditions of, or a fund's qualification under, Subchapter M does not appear to help investors evaluate or compare fund investments.[189]

To focus prospectus disclosure on the tax consequences of investing in a particular fund, the proposed amendments would require a description of the tax consequences to shareholders of buying, holding, exchanging, and selling the fund's shares.[190] The proposed amendments would require a fund to state, as applicable, that the fund intends to make distributions that may be taxed as ordinary income and capital gains. If a fund, as a result of its investment objectives or strategies, expects its distributions primarily to consist of ordinary income (or short-term capital gains that are taxed as ordinary income) or long-term capital gains, the fund would be required to provide disclosure to that effect. Providing specific disclosure about the anticipated tax consequences of a fund's distributions could help investors decide whether to invest in a particular fund and to compare fund investments.[191] The proposed amendments also would require a fund to state that it will provide each shareholder by a specified date (typically, January 31 of each year) with specific information about the amount of ordinary income and capital gains, if any, distributed during the prior calendar year.[192]

The proposed amendments would require a fund to disclose that its distributions will be taxable whether received in cash or reinvested in additional shares. The proposed amendments also would require a fund offering exchange privileges to disclose that exchanging shares of one fund for shares of another fund will be treated as a sale and that any gain from the transaction may be subject to federal income tax. Disclosure about the tax treatment of reinvested dividends and share exchanges would alert investors that reinvested distributions and exchange transactions are subject to tax.

Special Tax Disclosure for Tax-Exempt Funds. The proposed amendments would require a tax-exempt fund to inform investors of the special tax consequences associated with investing in the fund.[193] Because investors may be unaware that a portion of the distributions received from a tax-exempt fund may be subject to federal, state, or local income taxes, the proposed amendments would require a tax-exempt fund to disclose, as applicable, that:

(1) The fund may invest a portion of its assets in securities that generate income that is not exempt from federal or state income tax;[194]

(2) Income exempt from federal income tax may be subject to state and local income tax;

(3) Any capital gains distributed by the fund may be taxable; and

(4) A portion of the tax-exempt income distributed by the fund may be treated as a tax preference item for purposes of determining whether the shareholder is subject to the federal alternative minimum tax.[195]

Item 8—Distribution Arrangements

a. Placement of Prospectus Disclosure

Rule 12b–1 fees and sales loads directly affect an investor's return on a fund investment, and information about these charges is important to many investors. Currently, narrative explanations about a fund's distribution arrangements may appear in different places in the prospectus, making it difficult for investors to review and compare additional information about rule 12b–1 fees and sales loads.[196] The proposed amendments would require information about distribution arrangements to appear together in the prospectus.[197] This approach would help investors locate information designed to assist them in evaluating a

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[186] Many prospectuses, for example, include information about the conditions a fund must meet to qualify for pass-through tax treatment under Subchapter M and, when applicable, the tax treatment of private activity bonds, foreign currency contracts, and other fund investments. In addition, tax disclosure frequently includes technical jargon by referring, for example, to a fund's status as a ''regulated investment company'' and the fund's payment of ''spillback distributions'' and ''net investment income.'' *See* proposed General Instruction C.1(a), which would continue to instruct a fund not to use technical or legal terminology in the prospectus.

[187] Proposed Item 19(a). The proposed amendments would eliminate the requirement that a fund disclose in the SAI any special tax consequences resulting from offering more than one class of capital stock or being a series fund, since the tax consequences of investing in a multiple class or series fund are no different from those of investing in a single class or single series. While in the past a series fund could offset the gains of one portfolio against the losses of another, a series fund no longer may offset the gains and losses of its various portfolios. *See* I.R.C. 851(h)(1) (treating each portfolio of a series fund as a separate entity for tax purposes).

[188] To qualify for pass-through tax treatment under Subchapter M, a fund must, among other things: derive at least 90% of its gross income from certain specified sources; derive less than 30% of its gross income from the sale of securities and certain other specified investments held for less than 3 months; meet certain diversification requirements; and distribute at least 90% of its taxable income (which does not include capital gains) and net tax-exempt income for the year. *See* I.R.C. 512(a)(5), 851.

[189] In the rare case of a fund that does not expect to qualify for pass-through tax treatment under Subchapter M, proposed Item 7(d)(3) would require the fund to explain in the prospectus the tax consequences of not qualifying (*e.g.*, by disclosing that income and gains realized by the fund would be subject to double taxation—that is, both the fund and shareholders could be subject to tax liability). This disclosure would distinguish the fund from other funds and help investors appreciate the tax consequences of investing in the fund. Similarly, a fund that expects to pay an excise tax under the Internal Revenue Code with respect to its distributions would be required to disclose in the prospectus the consequences of paying the tax. *See* I.R.C. 4982.

[190] Proposed Item 7(d).

[191] The proposed disclosure requirement would apply to funds that have investment objectives or strategies that make it possible to anticipate the tax consequences of the fund's distributions (*e.g.*, funds described as ''tax-managed,'' ''tax-sensitive,'' or ''tax-advantaged'' often have investment strategies to maximize long-term capital gains and minimize ordinary income; conversely, money-market funds have investment objectives and strategies to maximize ordinary income).

[192] See Item 6(g)(iii) (consistent with this requirement).

[193] The proposed amendments also would require a tax-exempt fund to amend the general tax disclosures discussed above to reflect that the fund intends to distribute tax-exempt income.

[194] A fund that holds itself out as a tax-exempt fund can invest up to 20% of its assets in securities that generate taxable income. *See* Investment Company Act Release No. 9785 (May 31, 1977) (42 FR 29130); Guide 1. *See also* Fund Names Release, *supra* note .

[195] *See* Guide 30 (requiring substantially the same disclosure); Letter from Mary Joan Hoene, Associate Director, SEC, to Matthew P. Fink, Senior Vice President and General Counsel, ICI (Nov. 3, 1987) (if a fund uses a name that implies its distributions will be exempt from federal income tax, it may not consider any investments in municipal obligations that pay interest subject to the alternative minimum tax as part of the 80% of the fund's assets that must be invested in tax-exempt securities).

[196] A summary of a fund's fees and expenses, which includes information about rule 12b–1 fees and sales loads, is contained in the fee table.

[197] Proposed General Instruction C.2(a). Proposed Item 8 would consolidate prospectus disclosure requirements for rule 12b–1 fees, sales loads, and multiple class and master-feeder funds. Consistent with the proposed amendments to the fee table requirements, rule 12b–1 fees and sales loads would be referred to as ''marketing (12b–1) fees'' and ''sales fees (loads)'' in the narrative discussion of a fund's distribution arrangements in the prospectus.

particular fund and comparing fund investments.

b. Rule 12b–1 Plans

Prospectus Disclosure. Form N–1A requires detailed prospectus disclosure about rule 12b–1 plans.[198] The technical nature of this disclosure tends to obscure information about the amount of fees paid under a fund's rule 12b–1 plan. Although distribution fees are charged on an on-going basis in lieu of, or in addition to, sales loads, investors may not appreciate the continuing nature of distribution fees or that distribution fees cumulatively could exceed other types of sales charges.[199]

The proposed amendments would revise disclosure requirements for rule 12b–1 plans to focus prospectus disclosure on the fees paid under these plans. Focusing disclosure on fee information, rather than on technical, legal matters relating to a fund's rule 12b–1 plan, would appear to provide greater assistance to an investor in deciding whether to invest in the fund. In particular, the prospectus of a fund with a rule 12b–1 plan would be required to state the amount of the fee and provide disclosure to the following effect:

- The fund has a rule 12b–1 plan that allows the fund to pay fees for the sale and distribution of its shares; and
- Since these fees are paid out of the fund's assets on an on-going basis, over time these fees will increase the cost of your investment and may cost you more than paying other types of sales loads.

The proposed requirement to disclose that, over time rule 12b–1 fees will increase investment costs and may exceed other types of sales loads is intended to help an investor appreciate the continuing effect of rule 12b–1 fees on an investment in a fund. Similar, but more complex, disclosure is required by rules of the National Association of Securities Dealers, Inc. (''NASD').[200] The proposed amendments seek to simplify the disclosure so that it may be more readily understood by investors. The Commission requests comment on the proposed disclosure and whether the disclosure should appear with the narrative explanation about rule 12b–1 fees or in connection with the fee table disclosure of these fees.[201]

A fund may pay ''service fees'' alone or combined with fees for the sale and distribution of its shares.[202] If a fund pays service fees under a rule 12b–1 plan, the fund would reflect the payment of service fees in its rule 12b–1 disclosure. When service fees are paid outside of a rule 12b–1 plan, the fund would be required to disclose the amount and purpose of the fee in connection with information in the prospectus about any sales loads and rule 12b–1 fees charged by the fund.

Additional Information. Form N–1A requires a fund with a rule 12b–1 plan to describe the plan briefly and list the principal activities for which payments under the plan will be made. A fund also must disclose the relationship between amounts paid to and expenses incurred by the distributor (*i.e.*, whether the plan reimburses the distributor only for expenses incurred or compensates the distributor regardless of its expenses).[203] The Form requires additional disclosure if the fund engages in joint distribution activities with another fund[204] or if the fund's underwriter has incurred unreimbursed expenses under the fund's 12b–1 plan.[205]

The proposed amendments would move this disclosure to the SAI. The information adds unnecessary complexity to rule 12b–1 disclosure and, as a consequence, tends to obscure the amount and purpose of rule 12b–1 fees, which does not appear to help investors evaluate and compare fund investments.[206] Rule 12b–1 establishes requirements for a rule 12b–1 plan. In particular, a fund's board of directors must approve the rule 12b–1 plan and related fees.[207] NASD rules provide additional protection by limiting rule 12b–1 fees (including the payment of unreimbursed expenses) to a percentage of the fund's new gross sales.[208]

c. Sales Loads

Form N–1A requires disclosure in the prospectus about the amount of any sales load charged on an investment in a fund and when a sales load may be reduced or eliminated (*e.g.*, for larger

[198] Item 7(e), (f).

[199] *See* Updegrave, *Fund Investors Need to Go Back to School*, Money, Feb. 1996, at 98, 100 (of approximately 1,400 investors surveyed by Money magazine and The Vanguard Funds Group, only 22% knew that rule 12b–1 fees are charged against fund assets to pay for distribution of fund shares). Based on information compiled by the Division from Form N–SAR (17 CFR 274.101) filings, approximately 50% of funds charge rule 12b–1 fees.

[200] Rule 2830(d)(4) of the NASD Conduct Rules (NASD Manual (CCH) 4624) (requiring a fund with a rule 12b–1 plan to disclose adjacent to the fee table that ''long-term shareholders may pay more than the economic equivalent of the maximum front-end sales charges permitted by (NASD rules)''). Rule 2830(d)(2) of the NASD Conduct Rules (NASD Manual (CCH) 4623) limits aggregate front-end, deferred, and asset-based sales charges to 6.25% of total new gross sales for funds that pay service fees and to 7.25% of total new gross sales for funds that do not pay service fees. Because these aggregate caps apply on a fund-wide basis, over time an individual investor may pay fees exceeding the applicable cap. The NASD disclosure is intended to address this issue. *See* Securities Exchange Act Release No. 30897 (July 7, 1992) [57 FR 30985, 30987].

[201] If the proposed disclosure requirement is adopted, the Commission intends to discuss with the NASD its disclosure requirement so that similar disclosure is not required to be repeated in the prospectus. More generally, the Commission intends to discuss with the NASD other prospectus disclosure requirements imposed by NASD rules with the goal of incorporating these requirements, when appropriate, in applicable Commission rules or forms. In addition to streamlining disclosure requirements, this approach would give the Commission an opportunity to reassess NASD disclosure requirements in light of the Commission's broad initiatives to improve fund disclosure.

[202] *See* Rule 2830(b)(9) of the NASD Conduct Rules (NASD Manual (CCH) 4622) (defining ''service fees'' as payments for personal service and/or the maintenance of shareholder accounts). Rule 2830(d)(5) of the NASD Conduct Rules (NASD Manual (CCH) 4624) limits service fees to .25% of a fund's average annual net assets. *See also* Item 7(e) (requiring prospectus disclosure about the amount or rate of any trail fees paid out of fund assets to dealers or other persons that provide investors with advice concerning the purchase, sale, or holding of fund shares).

[203] Guide 29.

[204] A fund that engages in joint distribution activities must disclose that its rule 12b–1 fees may be used to finance another fund's distribution activities and how it allocates costs between funds.

[205] A fund must disclose both the amount of unreimbursed expenses and the amount as a percentage of the fund's net assets, and indicate whether it is obligated to pay the expenses. In addition, under Generally Accepted Accounting Principles, the amount of any unreimbursed expenses under a rule 12b–1 plan is provided in the fund's financial statements. For a fund that has agreed to pay unreimbursed expenses if its rule 12b–1 plan is terminated, any unreimbursed expenses appear as a liability on the fund's financial statements. *See* Financial Accounting Standards Board, Statement of Financial Accounting Standards No. 5 — Accounting for Contingencies (Mar. 1975); American Institute of Certified Public Accountants, Statement of Position 95–3, at 5–8 (July 28, 1995).

[206] Fund prospectuses typically include lengthy and generic descriptions of rule 12b–1 plans and related distribution activities. Prospectus disclosure, for example, consists of statements that distribution fees will be used to compensate broker-dealers and other financial intermediaries for providing distribution assistance and administrative, accounting, and other services to fund shareholders and to promote sales of fund shares through the printing and distribution of prospectuses, sales literature, and advertising materials. Some prospectuses include detailed descriptions of the requirements of rule 12b–1.

[207] *See* rule 12b–1(e) (permitting a fund's directors to implement or continue a rule 12b–1 plan only if they conclude that there is a reasonable likelihood that the plan will benefit the fund and its shareholders). *See also* rule 12b–1(d) (requiring directors to request and evaluate information reasonably necessary to make an informed decision about whether to adopt or continue a rule 12b–1 plan); rule 12b–1(a)(3)(ii) (requiring a rule 12b–1 plan to provide that directors review, at least quarterly, the amount and purposes of expenditures under the plan).

[208] *See supra* note 200. The Commission previously expressed concerns about the carryover of a large amount of unreimbursed expenses under a rule 12b–1 plan. Investment Company Act Release No. 16431 (June 13, 1988) (53 FR 23258, 23267) (proposing amendments to rule 12b–1). These concerns generally have been addressed by the NASD sales charge rule.

investments).[209] The proposed amendments would continue to require most of this disclosure to appear in the prospectus.[210] The proposed amendments, however, would modify certain requirements that call for detailed and technical information about sales loads because the disclosure tends to obscure information about the amount of the sales load charged by a fund and does not appear to help investors evaluate and compare fund investments.

Dealer Reallowances. A fund is required to include a table in the prospectus showing any front-end load as a percentage of both the offering price and the net amount invested for each breakpoint, and any amounts reallowed to dealers as a percentage of the offering price. The proposed amendments would move disclosure about dealer reallowances to the SAI[211] because it adds unnecessary complexity to sales load disclosure and does not appear to provide helpful information to investors. NASD rules address concerns about financial incentives brokers may have in recommending that customers buy or hold fund shares. These rules require a broker who recommends investments to a customer to have reasonable grounds for believing that the recommendation is suitable for that customer.[212]

Waivers and Sales Load Breakpoints. Sales loads often are waived when fund directors and other affiliated persons of the fund (*e.g.*, employees of the fund's adviser) purchase the fund's shares.[213] Form N–1A requires a fund to provide information about these arrangements in the prospectus. The proposed amendments would move this disclosure to the SAI because the disclosure concerns arrangements that are not available to the majority of investors and, as a consequence, adds unnecessary length to fund prospectuses.[214]

The proposed amendments also would move to the SAI disclosure about sales load breakpoints and waivers in connection with a merger or other reorganization.[215] This information does not appear to be important to investors unless and until a reorganization is announced. Because fund reorganizations generally require shareholder approval, this information would be provided to investors in proxy materials at a time when it would be more meaningful to them.[216]

Third-Party Fees. Form N–1A requires a fund to disclose in the prospectus any fees charged by a bank, broker-dealer or other person in connection with the purchase of the fund's shares, if the fees are charged with the fund's knowledge.[217] The proposed amendments would no longer require this disclosure, since these fees are not charged by the fund.[218] Investors are informed of (and pay) the fees as part of their relationship with, and the services provided by, the third party.[219]

d. Multiple Class and Master-Feeder Funds

Form N–1A requires certain information to be included in the prospectus about the different distribution and service arrangements of multiple class and master-feeder funds.[220] Consistent with the proposed approach for sales loads and rule 12b-1 fees, the proposed amendments would require this information to appear in one place in the prospectus. The proposed amendments also would simplify prospectus disclosure requirements for master-feeder funds by eliminating the requirement that a feeder fund discuss the possibility and consequences of no longer investing in the master fund (*e.g.*, if the master fund changes its investment objectives to be inconsistent with those of the feeder fund). Since master-feeder arrangements typically are designed to accommodate feeder funds, the possibility of a feeder fund not investing in the master fund is likely to be remote.[221]

Item 9.—Financial Highlights Information

Condensed Financial Information. The financial highlights information currently required at the beginning of the prospectus provides summary financial information about a fund, including the fund's total return for each of the last 10 fiscal years.[222] The proposed amendments would retain the table, but no longer require this information to appear at the front of the prospectus.[223] Requiring detailed financial information at the beginning of a fund's prospectus may unnecessarily impede a fund's ability to present prospectus disclosure in an effective format.

Form N–1A requires a brief explanation of the nature and source of the information included in the financial highlights table as well as a statement that the auditor's report is available upon request. To meet this requirement, funds generally disclose that the table presents financial information and how shareholders can obtain the auditor's report. The proposed amendments seek to assist investors in using the financial highlights information by requiring a narrative explanation to the following effect:

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[209] Item 7(b), (c). *See* section 22(d) [15 U.S.C. 80a–22(d)] (prohibiting the sale of fund shares other than at the current public offering price described in the prospectus) and rule 22d–1 (17 CFR 270.22d–1) (requiring disclosure about sales load breakpoints and waivers).

[210] The proposed amendments would clarify that a fund is required to disclose any sales loads imposed on shares purchased with reinvested dividends or other distributions. The proposed amendments also would codify the requirement in Guide 28 to explain in the prospectus that the term ''offering price'' includes a front-end load.

[211] Proposed Item 15(f).

[212] Rule 2310 of the NASD Conduct Rules (NASD Manual (CCH) 4261). When the Commission proposed amendments to rule 6c–10 (17 CFR 270.6c–10) in 1995, it requested comment whether reallowances to dealers in connection with deferred sales loads should be disclosed in fund prospectuses. Investment Company Act Release No. 20917 (Mar. 2, 1995) (60 FR 11890, 11894). In adopting amended rule 6c–10, the Commission deferred consideration of reallowances because the NASD is studying dealer compensation practices. Investment Company Act Release No. 22202 (Sept. 9, 1996) (61 FR 49011, 49016). Consistent with this approach, the proposed amendments would not revise the SAI disclosure of dealer reallowances to include deferred sales loads.

[213] For example, sales loads may be waived for investment advisory employees who are already knowledgeable about the fund, which may render marketing and other services unnecessary.

[214] Proposed Item 13(e).

[215] Proposed Item 18(b).

[216] Form N–14 under the Securities Act (17 CFR 239.23), which is used by funds to register securities issued in a merger or other reorganization and as the proxy statement for the transaction, requires disclosure about material information concerning the transaction. *See* Item 4(a) of Form N–14. *See also* Item 14(a)(3) of Schedule 14A under the Securities Exchange Act (requiring the same information in proxy statements).

[217] Item 7(b). Prospectus disclosure is not required if the fees are ''adequately disclosed'' in a wrapper to the prospectus.

[218] In some cases, fees charged by a third party, in effect, represent fees of the fund (*e.g.,* when the fees are charged to all shareholders to invest in the fund) and would be required to be disclosed in the prospectus.

[219] For fee disclosure requirements applicable to banks, broker-dealers and investment advisers, *see* Board of Governors of the Federal Reserve System, FDIC, Office of the Comptroller of the Currency, and Office of Thrift Supervision, Interagency Statement on Retail Sales of Nondeposit Products, 6 Fed. Banking L. Rep. (CCH) ¶ 70–113, at 82,598 (Feb. 15, 1994); rule 2230 of the NASD Conduct Rules (NASD Manual (CCH) 4211); rule 204–3(a) under the Advisers Act (17 CFR 275.204–3(a)) and Item 1 of Form ADV, Part II (17 CFR 279.1).

[220] General Instruction I; Item 6(h); Guide 34.

[221] Potential changes in fund operations and investments also are not unique to a feeder fund. With any fund investment, changes may occur that significantly affect the nature of the fund. The interests of all fund shareholders, including those of feeder funds, are represented by a board of directors. In addition, as with all shareholders, a feeder fund's shareholders would receive notice of and have an opportunity to vote on fundamental changes relating to the master fund's operations and investments.

[222] Item 3(a); General Instruction G to Form N–1A.

[223] Proposed Item 9; proposed General Instruction C.2(a).

The financial highlights table is intended to help you understand the fund's financial performance for the past 10 years (or, if shorter, for the period of the fund's operations). Certain information reflects financial results for a single fund share. The total returns in the table represent the rate an investor would have earned [or lost] on an investment in the fund for the period indicated (assuming reinvestment of all dividends and distributions). This information has been audited by _____, whose report, along with the fund's financial statements, is included in (the SAI or annual report), which is available upon request.[224]

The financial highlights disclosure requires performance information for a partial year to be annualized. The proposed amendments would require performance information for a period of less than a year to be stated without annualization. As previously indicated, the Commission is concerned that annualization of performance information may result in a performance figure that could mislead investors.[225]

Apart from certain other technical and conforming changes, the proposed amendments would not revise the requirements for financial highlights disclosure. The Commission recognizes, however, that additional changes may further improve the financial highlights information, which often takes up a full page or more in the prospectus. The Commission intends to revisit this disclosure in a separate rulemaking initiative that would revise fund financial statement requirements generally and requests specific comment on simplifying and updating the financial highlights information. In particular, the Commission requests comment on reducing the number of captions to simplify the table and decreasing the period for which information is required from 10 years to 5 years. Because the proposed amendments would require a bar chart illustrating a fund's returns for a 10-year period, the Commission requests comment whether the financial highlights information should be moved to the SAI, eliminated for certain or all funds,[226] or provided in other disclosure, such as in a fund's Form N–SAR filings.

Calculation of Performance Data. Form N–1A requires a brief explanation in the prospectus of how the fund calculates performance data if it includes performance information in advertisements permitted under rule 482 of the Securities Act.[227] This disclosure was required because an advertisement under rule 482 is an omitting prospectus under section 10(b) of the Securities Act and, as an omitting prospectus, was required to contain information ''the substance of which'' is contained in the prospectus. The proposed amendments would eliminate this disclosure requirement. Recent legislation added section 24(g) to the Investment Company Act, which authorizes the Commission to adopt rules permitting a fund to use a summary or omitting prospectus that includes information the substance of which is not included in the prospectus.[228] In the near future, the Commission intends to propose to amend rule 482 to eliminate the ''substance of which'' requirement, which would make the disclosure of performance data unnecessary. Disclosure about how performance is calculated does not appear to assist investors in deciding whether to invest in a particular fund and would continue to be available in the SAI.[229]

Part B—Statement of Additional Information

The SAI provides a more detailed discussion of matters described in the prospectus as well as additional information about a fund.[230] The proposed amendments would make a number of technical and conforming revisions to the SAI disclosure requirements to reflect the proposed changes in the prospectus disclosure requirements. After completion of the prospectus initiative, the Commission intends to review the SAI requirements and propose amendments to simplify and update SAI disclosure.

Part C—Other Information

Part C of Form N–1A contains information in support of a fund's registration statement that is not included in the prospectus or the SAI.[231] The proposed amendments would revise Part C to eliminate unnecessary filing requirements.[232] As amended, Part C would no longer require a fund to file model retirement plans that are used to offer the fund's shares[233] because funds routinely offer their shares in connection with retirement plans and the terms and other aspects of these plans are governed by the Employee Retirement Income Security Act of 1974 (''ERISA'') and by the Internal Revenue Code.[234] Amended Part C also would no longer require a fund to file a schedule showing how it calculates performance data,[235] since these calculations have become routine and the Commission staff can verify a fund's performance calculations during a fund examination.[236]

Part C requires a newly organized fund to provide an undertaking to file a post-effective amendment to its registration statement containing updated financial statements within 4 to 6 months of the effective date of the registration statement.[237] The purpose of this requirement is to assure the availability of financial information reflecting the fund's operations and investment of the fund's assets in accordance with its investment objectives and strategies. The Division has provided limited relief with respect to the timing of filing the updated financial information in two circumstances: (i) When a fund defers commencement of operations after the

[224] Since the financial highlights information is required to be audited for the latest 5 years, the standardized narrative would continue to refer to the auditor's report and its location.

[225] *See, e.g.,* Money Market Fund Prospectus Release, *supra* note 14, at 38458.

[226] In connection with the proposal to simplify money market fund prospectuses, the Commission proposed to replace the financial highlights table with a 10-year bar graph of fund returns. *See* Money Market Fund Prospectus Release, *supra* note 14, at 38455. The summary financial information does not appear to be useful for money market funds because these funds typically do not have changes in net assets or realized capital gains.

[227] Item 3(c); 17 CFR 230.482(a).

[228] *See* 1996 Securities Act *supra* note 139, at section 204.

[229] Proposed Item 21. For a money market fund, SAI disclosure would include, when applicable, the calculation of the fund's 7-day tax-equivalent yield and tax-effective yield. *See* Money Market Prospectus Release, *supra* note 14, at 38458.

[230] *See* proposed General Instruction C.1(b) (current General Instruction G). *See also supra* notes 39 and 47 accompanying text.

[231] Items 24 to 32.

[232] The proposed amendments also would eliminate the ''Instructions as to Summary Prospectuses'' that follow Part C. To the Commission's knowledge, no fund has used a summary prospectus under these instructions and the proposed profile would give funds the flexibility, at their option, to provide a summary disclosure document to investors. *See* Profile Release, *supra* note 1.

[233] Item 24(b)(14) (also requiring information about the costs and fees charged under the plans).

[234] *See* 29 U.S.C. 1104(c); I.R.C. 401–409. The Commission adopted this requirement in 1978, when the use of funds as vehicles for retirement planning was relatively new. Integrated Registration Statement Release, *supra* note 140, at 39553, 39557.

[235] Item 24(b)(16).

[236] *See* Money Market Fund Prospectus Release, *supra* note 14, at 38458 (proposing to eliminate this requirement). The Commission required funds to file these calculations in connection with the standardization of performance information used in fund advertisements to assure that funds would follow the formula correctly. Performance Release, *supra* note 14, at 3876.

The proposed amendments also would eliminate the requirement in Item 23(b)(3) to file voting trust agreements, because funds are not permitted to use these agreements under section 20(b) (15 U.S.C. 80a–20(b)). The undertaking required by Item 32(c) relating to the delivery of a fund's annual reports would be deleted because the requirement would be incorporated in proposed Item 5.

[237] Item 32(b).

effective date of its registration statement; and (ii) when the 4 to 6 month period following the effective date of the registration statement ends near the date of the financial statements to be used in the fund's next annual or semi-annual report.[238] The proposed amendments would codify the requirement to file updated financial information.[239] The proposed amendments would permit a fund to file a post-effective amendment within 4 to 6 months from the date the fund commences operations. The amendments also would give a fund up to 8 months to file updated financial statements that are included in the fund's semi-annual or annual report, if the post-effective amendment is filed within 30 days of the date of the latest balance sheet included in the annual or semi-annual report. The Commission requests comment whether the requirement to provide updated financial information should be retained. In particular, because the financial information may reflect a fund's operations for a very short period of time, is this information useful to investors?

D. General Instructions

1. Reorganizing and Simplifying the Instructions

The General Instructions to Form N–1A provide guidance on the use and content of the Form. The proposed amendments would update and reorganize the General Instructions to make the Instructions easier to use.[240] The revised General Instructions would consist of: (1) Definitions; (2) Filing and Use of Form N–1A; (3) Preparation of the Registration Statement; and (4) Incorporation by Reference.

Definitions. Proposed General Instruction A would define certain terms generally used in Form N–1A. The definitions would provide greater clarity and avoid repeated references throughout the Form (for example, to the Investment Company Act). The proposed amendments would specify that all sections and rules used in Form N–1A refer to sections and rules under the Investment Company Act, unless otherwise indicated, and that all terms defined in the Investment Company Act and related rules have the same meaning in Form N–1A, unless otherwise defined.

The proposed amendments would add several definitions to standardize certain terms, which would be capitalized throughout the Form. The term ''Fund'' would be defined as a registrant or a series of the registrant.[241] General Instruction A also would define ''Registrant'' and ''Series'' and these terms would be used when information is specifically required for a registrant or a series.[242]

Filing and Use of Form N–1A; Preparation of the Registration Statement. Proposed General Instruction B would incorporate a more user-friendly, question-and-answer format regarding the filing and use of Form N–1A and would replace current Instructions A through D and F. Proposed General Instruction C would provide streamlined requirements for preparing the registration statement and would replace Instruction G. The new Instruction would continue to emphasize the need to provide clear and concise prospectus disclosure and permit a fund to include in its prospectus or SAI additional information that is not misleading and that does not, because of its nature, quantity, or manner of presentation, obscure the information required to be included. Instructions to the Form permitting information to be added to the prospectus and SAI would be deleted, with Instruction C providing this guidance for purposes of all fund disclosure.[243]

Instruction C also would instruct a fund to avoid referring to the SAI or shareholder reports in the prospectus, unless specifically required by the Form.[244] Repeated cross-references to the SAI and shareholder reports appear to add unnecessary length and complexity to fund prospectuses and detract from the purpose of prospectus disclosure, which is to provide essential information that enables fund investors to make informed investment decisions. Instruction C would allow cross-references to be used within the prospectus when the cross-reference would assist investors in understanding the information presented and would not add complexity to prospectus disclosure. The Commission requests comment on the proposed approach to cross-references.

Instruction C would provide guidance on the use of Form N–1A by more than one fund and a multiple class fund. Fund prospectuses frequently contain information for multiple series and classes that offer investors different investment alternatives and distribution arrangements. Because this practice was not common in 1983 when Form N–1A was adopted, certain Form requirements may have the unintended effect of making prospectus disclosure for multiple funds and classes more complex than necessary.[245] When information is presented clearly, prospectuses offering more than one fund may make it easier for investors to compare funds and may be more efficient for funds and investors by eliminating the need to provide investors with multiple prospectuses containing repetitive information. Instruction C generally would give funds the flexibility to organize information about multiple funds and classes in an effective manner based on their particular circumstances as long as the presentation is consistent with the goal of providing clear and concise information about a fund.[246]

Instruction C would permit a fund that is offered as an investment alternative in a participant-directed defined contribution plan qualified under the Internal Revenue Code (''plan'') to modify its prospectus for use

[238] 1994 GCL, *supra* note 28, at V.

[239] Proposed Item 22(a)(2). A conforming change would be made to rule 485(b)(1)(iv) under the Securities Act (17 CFR 230.485(b)(1)(iv)), which currently includes a reference to the undertaking required by Item 32(b) of Part C.

[240] Certain information would be deleted as unnecessary (*e.g.*, current Instruction H (Electronic Filers) would be deleted since this Instruction includes only a cross-reference to Item 24(b)(17), which requires a financial data schedule to accompany an electronic filing as an exhibit).

[241] Form N–1A generally calls for disclosure about the ''Registrant'' (meaning the investment company registered under the Investment Company Act), although the Form sometimes refers to a series. Because the Form may be filed for one or more series of a registered investment company, the current references may cause confusion about the entity for which disclosure is required.

[242] General Instruction A would define a ''Master-Feeder Fund'' and a ''Multiple Class Fund,'' which currently are defined in Instruction I. The proposed amendments also would define a ''Money Market Fund'' as a fund that holds itself out as a money market fund and meets the maturity, quality, and diversification requirements of rule 2a-7.

[243] *See, e.g.*, Item 1(b) (permitting other information to be included on the cover page of the prospectus). Similarly, specific Instructions in Part A that call for brief and concise prospectus disclosure would be deleted, since Instruction C would include this requirement for purposes of all prospectus disclosure.

[244] *See supra* notes 39–40, 45, and 224 and accompanying text.

[245] *See* John Hancock Funds, Inc. (pub. avail. June 28, 1996).

[246] A fund, for example, may decide that using a horizontal rather than vertical presentation for the fee table would provide the most effective presentation of the required fee information. In responding to the proposed risk/return summary requirements, a fund may find that different formats communicate the required information effectively. Depending on the number and type of funds offered in the prospectus, for example, a fund may find it useful to group the required information for all funds together under each caption or to present the information sequentially for each fund. *See id.* (using a two-page disclosure format for each of 7 funds offered in a single prospectus).

by plan participants.[247] Certain prospectus disclosure appears to be unnecessary for plan participants because of the way plans are structured and regulated. The requirements of ERISA and the Internal Revenue Code and the terms of individual plans govern, among other things, participant investments and plan distributions (including the tax consequences of distributions).[248] A prospectus used to offer fund shares to plan participants would be permitted to omit the information required by proposed Items 7 (shareholder information) and 8 (distribution arrangements). The Commission requests comment whether it would be appropriate to omit or modify other disclosure requirements for prospectuses provided to plan participants. The Commission also requests comment whether the flexibility to omit certain disclosure requirements should be expanded to non-qualified participant-directed defined contribution plans.[249]

Incorporation by Reference. By adopting a two-part disclosure format for Form N–1A, the Commission intended Part A of the registration statement to provide investors with a simplified prospectus that, standing alone, would meet the requirements of section 10(a) of the Securities Act.[250] Part B, the SAI (which is available to investors upon request), includes additional information that the Commission has determined may be useful to some investors, but is not necessary in the public interest or for the protection of investors to be in the prospectus.[251] Form N–1A currently permits, but does not require, a fund to incorporate the SAI by reference into the prospectus. The two-part disclosure format has been widely used by funds, and the Commission has found that the current approach to incorporation by reference supports the intended purpose of Form N–1A and should be retained.[252]

Proposed General Instruction D would address incorporation by reference and replace current Instruction E.[253] Instruction D would continue to permit, but not require, a fund to incorporate the SAI by reference into the prospectus. The revised Instruction would clarify that incorporating information by reference from the SAI is not permitted as a response to information required to be included in the prospectus. Permitting the SAI to be incorporated by reference into the prospectus was meant to allow funds to *add* material the Commission determined not to require in the prospectus, not to permit funds to *subtract* required information from the prospectus and place it in the SAI. The proposed amendments to Form N–1A also seek to provide funds with clearer directions for allocating disclosure between the prospectus and the SAI.[254]

2. Form N–1A Guidelines and Related Staff Positions

The Guides were prepared by the Division and published by the Commission when it adopted Form N–1A in 1983.[255] The Guides, which generally restate Division positions that may affect fund disclosure, were intended to assist funds in preparing and filing their registration statements. Additional Division positions on disclosure matters are included in the GCLs.[256]

Although certain Guides have been revised and new ones added in connection with the adoption of various rules, the Guides collectively have not been reviewed since 1983. Certain Division positions in the Guides and GCLs have become outdated.[257] Other Guides and GCLs explain or restate legal requirements and may encourage generic disclosure about fund operations that does not appear to help investors evaluate and compare funds.[258] In addition, the presentation of information in 35 Guides and 7 GCLs is not organized in the most useful or effective manner.

To address these issues, the proposed amendments would incorporate certain disclosure requirements from the Guides and GCLs. Other disclosure requirements in the Guides and the GCLs would not be incorporated in the revised Form because, among other things, they are outdated or result in disclosure about technical, legal, and operational matters generally common to all funds. In addition, certain requirements calling for specific disclosure about individual fund investments would not be incorporated in the revised Form because they have tended to standardize disclosure about certain securities without regard to how a particular fund intends to use the securities in achieving its investment objectives. The proposed amendments seek to provide investors with information about how a fund's particular portfolio will be managed and elicit disclosure tailored to a fund's particular investment objectives and strategies.[259]

Information in the Guides and GCLs about legal requirements (including information about fund organization and operations), interpretive positions, and descriptions of filing procedures would be updated and reorganized in a new Investment Company Registration

[247] *See* Profile Release, *supra* note 1 (permitting a profile to be modified for use by plan participants).

[248] *See supra* note 234.

[249] *E.g.*, eligible plans under section 457 of the Internal Revenue Code sponsored by a state, a political subdivision of a state, or certain nongovernmental tax-exempt organizations.

[250] Form N–1A Adopting Release, *supra* note 12, at 37930.

[251] *Id. See* White v. Melton, 757 F. Supp. 267 (S.D.N.Y. 1991) (citing the Form N–1A Adopting Release, *supra* note 12, as authority for the principle that certain matters are required to appear in the prospectus and others may be appropriately disclosed in the SAI, which may be incorporated by reference into the prospectus).

[252] *See* Form N–1A Proposing Release, *supra* note 13, at 818 (suggesting that prohibiting incorporation by reference of the SAI into the prospectus or, alternatively, requiring delivery of the SAI with the prospectus, would ''vitiate the Commission's attempt to provide shorter, simpler prospectuses'').

[253] The proposed amendments would make technical revisions to Instruction D to simplify its requirements. The specific instruction regarding incorporation by reference of condensed financial information from reports to shareholders in General Instruction E would be incorporated in proposed Item 9 (condensed financial information). The instruction allowing incorporation of financial information in response to Item 23 of Form N–1A from reports to shareholders would be deleted as unnecessary because the Form does not limit incorporation of information into the SAI. The requirement that a shareholder report incorporated by reference into the SAI be delivered with the SAI would be added to the SAI cover page requirements.

[254] Section 19(a) of the Securities Act [15 U.S.C. 77q(a)] protects a fund from liability under the Securities Act for actions taken in good faith in conformity with Commission rules. The proposed amendments to Form N–1A are designed to provide better guidance to funds for purposes of section 19(a). *See* Form N–1A Adopting Release, *supra* note 12, at 37930.

[255] Form N–1A Adopting Release, *supra* note 12, at 37938 (stating that publication of the Guides was not intended to elevate their status beyond that of staff guidance). The Commission initially adopted guidelines in 1972 to assist funds in preparing and filing registration statements. Investment Company Act Release Nos. 7220, 7221 (June 9, 1972) (37 FR 12790) (''Guides Releases'').

[256] *See supra* note 28.

[257] *See, e.g.*, Guide 9 (Short Sales) (for short sales, funds no longer are required to maintain amounts in segregated accounts at a level that, with the amount deposited with the broker as collateral, is at least equal to the market value of the securities at the time they are sold short, *see* Robertson Stephens Investment Trust (pub. avail. Aug. 24, 1995)); Guide 30 (Tax Consequences) (each series is now treated as a separate entity for tax purposes and may not, as suggested by the Guide, offset gains of one series against losses of another); *supra* note 28, 1990 GCL at I.B (undertakings), 1991 GCL at II.A.2 (country, international, and global funds), and 1992 GCL at II.F (segregated accounts).

[258] *See, e.g.*, Guides 8 (Senior Securities, Reverse Repurchase Agreements, Firm Commitment Agreements and Standby Commitment Agreements), 9 (Short Sales), 15 (Qualification for Treatment Under Subchapter M of the Internal Revenue Code), and 28 (Valuation of Securities Being Offered); *supra* note 28, 1994 GCL at III.C (redemption fees) and 1995 GCL at II.A (MDFP disclosure).

[259] *See supra* section II.A.4.

Package (''Registration Package').[260] The Registration Package would be made available to all funds and updated on a regular basis.[261]

E. Technical Rule Amendments

The Commission is proposing several technical rule amendments, primarily to implement the recommendations of the Commission's Task Force on Disclosure Simplification (''Task Force'') that apply to funds.[262] The Task Force has recommended eliminating the cross-reference sheet requirements in registration statements because similar information is available in the table of contents required in the prospectus.[263] To implement this recommendation for funds, the proposed amendments would delete the cross-reference sheet requirements in rules 481, 495, and 497 under the Securities Act.[264] The Task Force also has recommended, and the Commission has adopted, modified signature requirements to allow corporate issuers to include typed, duplicated, or faxed signatures on paper filings if a manual signature is retained by a registrant for a period of 5 years.[265] The proposed amendments would revise signature requirements for funds in accordance with this recommendation.[266]

F. Transition Period

If the Commission adopts the proposed amendments to Form N–1A, the revised Form would replace current Form N–1A. The Commission expects to provide for a transition period after the effective date of revised Form N–1A to give funds sufficient time to prepare their registration statements under the proposed amendments. A fund filing a new registration statement would be required to comply with the proposed amendments 6 months after the effective date of the amendments. A fund with an effective registration statement would be required to comply with the amendments at the time of the next annual update of its registration statement, but no later than 16 months after the effective date of the proposed amendments. A fund also, at its option, could comply with the revised Form at any time after the effective date of the amendments. The Commission requests comment on the proposed transition period.

III. General Request for Comments

The Commission requests that any interested persons submit comments on the proposed amendments that are the subject of this release, suggest additional changes (including changes to related provisions of rules and forms that the Commission is not proposing to amend), or submit comments on other matters that might affect the proposed amendments. Commenters suggesting alternative approaches are encouraged to submit proposed rule or form text. For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), the Commission also is requesting information regarding the potential impact of the proposed rule on the economy on an annual basis. Commenters should provide empirical data to support their views.

IV. Paperwork Reduction Act

The proposed Form contains ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), and the Commission has submitted the amendments to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for the collection of information is ''Form N–1A Under the Investment Company Act of 1940 and the Securities Act of 1933, Registration Statement of Open-End Management Investment Companies.''

A registration statement on Form N–1A must contain information the Commission has determined to be necessary or appropriate in the public interest or for the protection of investors. The proposed amendments to Form N–1A seek to minimize prospectus disclosure about technical, legal, and operational matters that generally are common to all funds and to focus disclosure on essential information about a particular fund that would assist an investor in deciding whether to invest in that fund.

The proposed amendments would move certain disclosure about fund organization and legal requirements under the Investment Company Act to the SAI, simplify and clarify the instructions for completing the Form, and improve risk disclosure by requiring a discussion of the overall risks of investing in a fund, a narrative risk summary, and a graphic presentation of risk. Other technical amendments are proposed that would not impose any additional recordkeeping or reporting burden on funds.

The Commission estimates that there are approximately 2,700 registered open-end investment companies that file registration statements on Form N–1A, representing approximately 7,500 investment portfolios (''portfolios''). The Commission estimates, based on the current number of registration statements filed on Form N–1A, that approximately 4,649 registration statements, including post-effective amendments, would be filed on Form N–1A annually for a total burden of 990,000 hours. This represents a decrease of 2,205,824 hours, which is primarily to eliminate the Form N–1A burden hour estimates related to preparing financial statements because that burden is reflected in the burden hours attributable to annual and semi-annual reports required under rule 30d–1. The information collection requirements imposed by Form N–1A are mandatory. Responses to the collection of information will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid control number.

Under 44 U.S.C. 3506(c)(2)(B), the Commission solicits comment to: (i) Evaluate whether the proposed collection of information is necessary

[260] Similar guidance currently is available in the Investment Adviser Registration Package. Because the Registration Package would provide guidance on the preparation of Form N–1A, the Guides would not be republished with Form N–1A, and the GCLs no longer would apply. The Commission also is proposing to rescind the Guides Releases, *supra* note 255.

[261] The Registration Package would include requirements discussed in the GCLs relating to closed-end investment companies and unit investment trusts, and other matters not relevant to Form N–1A (*e.g.*, proxy disclosure). Information traditionally addressed in the GCLs would be considered when the Registration Package is updated, unless the nature of the information warrants immediate dissemination. The Registration Package would serve as a ''small entity compliance guide,'' which the Commission is required to publish under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C.S. 601 note (Supp. July 1996)).

[262] *See supra* note 36 (proposing to amend rule 481(b)(1) to require a simplified cover page legend that neither fund shares nor the prospectus have been approved by the Commission). Disclosure Simplification Task Force Report, *supra* note 15, at 18.

[263] Disclosure Simplification Task Force Report, *supra* note 15, at 90. *See, e.g.*, rule 481(c) (17 CFR 230.481(c)) (requiring a table of contents in fund prospectuses). The Commission has adopted amendments to Item 501(b) of Regulation S–K (17 CFR 229.501(b)) to eliminate the cross-reference sheet requirement for companies other than funds. Securities Act Release No. 7300 (June 14, 1996) (61 FR 30397, 30398) (''Release 7300'').

[264] 17 CFR 230.495.

[265] Release 7300, *supra* note 263, at 30400. This change would make available to paper filers the additional signature options currently permitted for corporate issuers filing electronically.

[266] Proposed revisions to rule 8b-11 (17 CFR 270.8b-11). The proposed amendments also would update a Note appearing before rule 480 (17 CFR 230.480), which explains the applicability of certain rules in Regulation C to funds.

for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Those who want to submit comments on the collection of information requirements should direct their comments to the OMB, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and also should send a copy of their comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–6009 with reference to File No. S7–10–97. The OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, so a comment to OMB is best assured of having its full effect if the OMB receives it within 30 days of publication.

V. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis (''Analysis'') in accordance with 5 U.S.C. 603 regarding the proposed amendments to Form N–1A. The Analysis explains that the proposed amendments would revise disclosure requirements for fund prospectuses to minimize prospectus disclosure about technical, legal, and operational matters that generally are common to all funds, and to focus prospectus disclosure on essential information about a particular fund that would assist an investor in deciding whether to invest in that fund. The Analysis also explains that the proposed amendments are intended to improve fund prospectuses and to promote more effective communication of information about funds.

The Analysis discusses the impact of the proposed rule on small entities, which are defined, for the purposes of the Securities Act and the Investment Company Act, as investment companies with net assets of $50 million or less as of the end of the most recent fiscal year (17 CFR 230.157(b) and 270.0–10). The Commission estimates that approximately 2,700 registered open-end management investment companies are subject to the requirements of Form N–1A and of these, approximately 620 (23%) are investment companies that would be small entities.

The Analysis explains that the proposed amendments would not impose any substantial additional compliance burdens for small entities because most of the changes do not require new information, although, initially, the changes would require small entities to revise their prospectuses to present the information in the amended format. The proposed amendments primarily would clarify and simplify the instructions for completing Form N–1A, shift information from the prospectus to the SAI, and require new formats for certain information. On balance, the Commission believes that preparing and updating the revised Form should take the same amount of time (or possibly less time) as preparing and updating the current Form.

As stated in the Analysis, the Commission considered several alternatives to the amendments proposed for Form N–1A, including, among others, establishing different compliance or reporting requirements for small entities or exempting them from all or part of the proposed rule. Because the amendments to Form N–1A are intended to improve prospectus disclosure for all investors, whether they invest in funds that are small entities or others, the Commission believes that separate treatment for small entities is inconsistent with the protection of investors.

The Commission encourages the submission of comments on the Analysis, including specific comment on (i) the number of small entities that would be affected by the proposed amendments and (ii) the discussion of the impact of the proposed amendments on small entities. Comments will be considered in the preparation of the Final Regulatory Flexibility Analysis if the proposed amendments are adopted. You may obtain a copy of the Analysis from John M. Ganley, Senior Counsel, Securities and Exchange Commission, 450 5th Street, NW., Mail Stop 10–2, Washington, DC 20549–6009.

VI. Statutory Authority

The amendments to the Commission's rules and forms are being proposed pursuant to sections 5, 7, 8, 10, and 19(a) of the Securities Act (15 U.S.C. 77e, 77g, 77h, 77j, and 77s(a)), and sections 8, 22, 24(g), 30 and 38 of the Investment Company Act (15 U.S.C. 80a–8, 80a–22, 80a–24(g), 80a–29, and 80a–37). The authority citations for the amendments to the rules precede the text of the amendments.

VII. Text of Proposed Amendments

List of Subjects in 17 CFR Parts 230, 239, 270, and 274

Advertising, Investment companies, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, the Commission proposes to amend Chapter II, Title 17 of the Code of Federal Regulations as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

The authority citation for Part 230 is revised to read in part as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78d, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 78t, 80a–8, 80a–24, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

Revise the note immediately preceding § 230.480 to read as follows:

Note: The rules in this section of Regulation C (§§ 230.480 to 230.488 and §§ 230.495 to 230.498) apply only to investment companies and business development companies. Section 230.489 applies to certain entities excepted from the definition of investment company by rules under the Investment Company Act of 1940. The rules in the rest of Regulation C (§§ 230.400 to 230.479 and §§ 230.490 to 230.494), unless the context specifically indicates otherwise, also apply to investment companies and business development companies. *See* § 230.400.

Amend § 230.481 to revise the section heading and paragraphs (a) and (b)(1) to read as follows:

§ 230.481 Information required in prospectuses.

* * * * *

(a) The facing page of every registration statement must indicate the approximate date of proposed sale to the public.

(b) * * *

(1) Disclosure in a legend that indicates that the Commission has not approved the securities or passed upon the adequacy of disclosure in the prospectus and that any representation to the contrary is a criminal offense. The legend may be in one of the following formats or other clear and concise language:

The Securities and Exchange Commission has not approved or disapproved these securities or passed upon the adequacy of this prospectus. Any representation to the contrary is a criminal offense.; or

The Securities and Exchange Commission has not approved or disapproved these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.; and

* * * * *

Amend § 230.485 to revise paragraph (b)(1)(iv) to read as follows:

§ 230.485 Effective date of post-effective amendments filed by certain registered investment companies.

* * * * *

(b) * * *

(1) * * *

(iv) Filing financial statements after the effective date of the registration statement under Item 22(a)(2) of Form N–1A (17 CFR 239.15A or 274.11A);

* * * * *

§ 230.495 [Amended]

5. Amend § 230.495 to remove the words ''cross-reference sheet;'' from paragraph (a).

§ 230.497 [Amended]

6. Amend § 230.497 to remove the words '', together with 5 copies of a cross reference sheet similar to that previously filed, if changed'' from paragraph (d) and '', together with five copies of a cross-reference sheet similar to that previously filed, if changed'' from paragraph (e).

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

The authority citation for part 270 continues to read, in part, as follows:

Authority: 15 U.S.C. 80a-1 *et seq.*, 80a-37, 80a-39 unless otherwise noted;

* * * * *

8. Amend § 270.8b-11 to remove the word ''manually'' from paragraph (c) and to revise paragraph (e) to read as follows:

§ 270.8b-11 Number of copies; signatures; binding.

* * * * *

(e) *Signatures.* Where the Act or the rules thereunder, including paragraph (c) of this section, require a document filed with or furnished to the Commission to be signed, the document should be manually signed, or signed using either typed signatures or duplicated or facsimile versions of manual signatures. When typed, duplicated or facsimile signatures are used, each signatory to the filing shall manually sign a signature page or other document authenticating, acknowledging, or otherwise adopting his or her signature that appears in the filing. Execute each such document before or at the time the filing is made and retain for a period of five years. Upon request, the registrant shall furnish to the Commission or its staff a copy of any or all documents retained pursuant to this section.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

9. The authority citation for part 239 is revised to read, in part, as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a-8, 80a-24, 80a-29, 80a-30 and 80a-37, unless otherwise noted.

* * * * *

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

10. The authority citation for part 274 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a-8, 80a-24, and 80a-29, unless otherwise noted.

11. Revise Form N–1A (referenced in §§ 239.15A and 274.11A) (including the Guidelines to the Form) to read as follows:

Note: The text of Form N–1A does not and this amendment will not appear in the Code of Federal Regulations.

OMB Approval

OMB Number:
Expires:
Estimated average burden
hours per response

Securities and Exchange Commission

Washington, D.C. 20549

FORM N–1A

REGISTRATION STATEMENT
UNDER THE SECURITIES ACT OF 1933.....[ ]
Pre-Effective Amendment No. ____ [ ]
Post-Effective Amendment No. ____ [ ]
and/or
REGISTRATION STATEMENT
UNDER THE INVESTMENT
COMPANY ACT OF 1940 .....[ ]
Amendment No. ____.....[ ]

(Check appropriate box or boxes.)

_____

(Exact Name of Registrant as Specified in Charter)

_____

(Address of Principal Executive Offices) (Zip Code)

Registrant's Telephone Number, including Area Code _____

(Name and Address of Agent for Service)

Approximate Date of Proposed Public Offering _____

It is proposed that this filing will become effective (check appropriate box)

[ ] immediately upon filing pursuant to paragraph (b)
[ ] on (date) pursuant to paragraph (b)
[ ] 60 days after filing pursuant to paragraph (a)(1)
[ ] on (date) pursuant to paragraph (a)(1)
[ ] 75 days after filing pursuant to paragraph (a)(2)
[ ] on (date) pursuant to paragraph (a)(2) of rule 485.

If appropriate, check the following box:

[ ] This post-effective amendment designates a new effective date for a previously filed post-effective amendment.

Calculation of Registration Fee Under the Securities Act of 1933

Title of Securities Being Registered	Amount Being Registered	Proposed Maximum Offering Price Per Unit	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee

Omit from the facing sheet reference to the other Act if the Registration Statement or amendment is filed under only one of the Acts. Include the ''Approximate Date of Proposed Public Offering'' and the table showing the calculation of the registration fee only where shares are being registered under the Securities Act of 1933. Registrants that are registering an indefinite number of shares under the Securities Act of 1933 in accordance with the provisions of rule 24f-2 under the Investment Company Act of 1940 (17 CFR 270.24f-2) should include the declaration required by rule 24f-2(a)(1) on the facing sheet, in lieu of the table showing the calculation of the registration fee under the Securities Act of 1933 or in combination with the calculation as appropriate.

No response to the collection of information contained in this form is required unless the form displays a currently valid OMB control number.

Contents of Form N–1A

General Instructions

A. Definitions

References to sections and rules in this Form N–1A are under the Investment Company Act of 1940 (15 U.S.C. 80a–1, *et seq.*) (the ''Investment Company Act'') unless otherwise indicated. Terms used in this Form N–1A have the same meaning as in the Investment Company Act or the related rules unless otherwise indicated. As used in this Form N–1A, the terms set forth below have the following meanings:

''Fund'' means the Registrant, or if the Registrant offers more than one Series, a separate Series of the Registrant. When a form item specifically applies to a Registrant or a Series, those terms will be used.

''Master-Feeder Fund'' means a two-tiered arrangement in which one or more Funds (each a ''Feeder Fund'') holds shares of a single Fund (the ''Master Fund'') as its only securities in accordance with section 12(d)(1)(E) (15 U.S.C. 80a–12(d)(1)(E)).

''Money Market Fund'' means a Fund that holds itself out as money market fund and meets the maturity, quality, and diversification requirements of rule 2a–7 (17 CFR 270.2a–7).

''Multiple Class Fund'' means a Fund that issues more than one class of shares, each of which represents interests in the same portfolio of securities under rule 18f–3 (17 CFR 270.18f–3) or an order exempting the Fund from sections 18(f), 18(g), and 18(i) (15 U.S.C. 80a–18(f), 18(g), and 18(i)).

''Registrant'' means an open-end management investment company registered under the Investment Company Act.

''SAI'' means the Statement of Additional Information required by Part B of this Form.

''Securities Act'' means the Securities Act of 1933 (15 U.S.C. 77a *et seq.*).

''Securities Exchange Act'' means the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

''Series'' means a series of shares offered by a Registrant that represents undivided interests in a portfolio of investments and that is preferred over all other series of shares in respect of assets specifically allocated to that series in accordance with rule 18f–2(a) (17 CFR 270.18f–2(a)).

B. Filing and Use of Form N–1A

1. What is Form N–1A used for?

Form N–1A is used by Funds, except insurance company separate accounts and small business investment companies licensed under the United States Small Business Administration, to file:

(a) An initial registration statement under the Investment Company Act and amendments to the registration statement, including amendments required by rule 8b–16 under the Investment Company Act (17 CFR 270.8b–16);

(b) An initial registration statement under the Securities Act and amendments to the registration statement, including amendments required by section 10(a)(3) of the Securities Act (15 U.S.C. 77j(a)(3)); or

(c) Any combination of the filings in paragraph (a) or (b).

2. What does the registration statement consist of?

(a) For registration statements or amendments filed under both the Investment Company Act and the Securities Act or only under the Securities Act (except as set forth in (c) below), the registration statement consists of the facing sheet of the Form, Parts A, B, and C, and the required signatures.

(b) For registration statements or amendments filed only under the Investment Company Act, the registration statement consists of the facing sheet of the Form, responses to all Items of Parts A (except Items 1, 2, 3, 5, and 9), B, and C (except Items 23(e) and (i)–(k)), and the required signatures.

(c) For amendments to registration statements filed under the Securities Act solely for the purpose of registering additional securities, the registration statement consists of the facing sheet of the Form, the required signatures, and if the amendment is filed pursuant to section 24(e) (15 U.S.C. 80a–24(e)) of the Investment Company Act, a response to Item 23(i).

3. What are the filing fees for Form N–1A?

(a) A Fund must pay a registration fee, calculated in accordance with section 6(b) of the Securities Act (15 U.S.C. 77f(b)) and rule 24f–2 under the Investment Company Act, to register securities under that Act.

(b) No filing fees are required to register under the Investment Company Act.

4. What rules apply to the filing of a registration statement on Form N–1A?

(a) For registration statements and amendments filed under both the Investment Company Act and the Securities Act or only under the Securities Act, the general rules regarding the filing of registration statements in Regulation C under the Securities Act (17 CFR 230.400–230.497) apply to the filing of Form N–1A. Specific requirements concerning Funds are set forth in rules 480–485 and 495–497 of Regulation C.

(b) For registration statements and amendments filed only under the Investment Company Act, the general rules in rules 8b–1—8b–32 (17 CFR 270.8b–1—270.8b–32) apply to the filing of Form N–1A.

(c) Regulation S–T (17 CFR 232.10–232.903) applies to all filings on the Commission's Electronic Data Gathering, Analysis, and Retrieval system (''EDGAR'').

C. Preparation of the Registration Statement

1. Form N–1A is divided into three parts:

(a) *Part A.* Part A sets forth the information that must be included in a Fund's prospectus under section 10(a) of the Securities Act. The purpose of the prospectus is to provide essential information about the Fund in a way that will assist investors in making informed decisions about whether to purchase the securities being offered. Because investors who rely on the prospectus may not be sophisticated in legal or financial matters, provide the information in the prospectus in a clear, concise, and understandable manner. For example, using excessive detail, technical or legal terminology, complex language, and lengthy sentences and paragraphs may make the prospectus difficult for many investors to understand and detract from its usefulness. In responding to the Items in Part A:

(i) Respond as simply and directly as reasonably possible and include only as much information as is necessary to an understanding of the fundamental and particular characteristics of the Fund. Brevity is especially important in describing practices or aspects of the Fund's operations that do not differ materially from those of other investment companies.

(ii) Avoid detailed descriptions of practices that are required or otherwise affected by legal requirements.

(iii) Avoid, except when specifically required, cross-references to the SAI or shareholder reports in connection with disclosure provided in the prospectus. The Fund may provide cross-references within the prospectus when the use of cross-references assists investors in understanding the information presented and does not add complexity to the prospectus.

(b) *Part B.* Part B sets forth the information that must be included in a Fund's SAI. The purpose of the SAI is to provide additional information about the Fund that the Commission has concluded is not necessary or appropriate in the public interest or for the protection of investors to be in the prospectus, but that some investors may find useful. Part B affords the Fund an opportunity to expand discussions of the matters described in the prospectus by including additional information that the Fund believes may be of interest to some investors. The Fund should not duplicate in the SAI information that is provided in the prospectus, unless necessary to make the SAI comprehensible as a document independent of the prospectus.

(c) *Part C.* Part C sets forth other information that must be included in a Fund's registration statement.

2. Additional Matters:

(a) *Organization of Information.* A Fund should organize the information in the prospectus and SAI to make it easy for investors to understand. Disclose the information required by Items 2 and 3 (the Risk/Return Summary) in numerical order at the front of the prospectus. Do not precede these Items by any other Item except the Cover Page (Item 1) and the table of contents required by rule 481(c) under the Securities Act (17 CFR 230.481(c)). Disclose the information required by Item 8 (Distribution Arrangements) in one place in the prospectus.

(b) *Other Information.* Except for the Risk/Return Summary, a Fund may include other information in the prospectus or the SAI, including, for example, charts, graphs or tables, so long as the information is not incomplete, inaccurate, or misleading and does not, because of its nature, quantity, or manner of presentation, obscure or impede understanding of the information that is required to be included. The Risk/Return Summary may not include disclosure other than that required or permitted by Items 2 and 3.

(c) *Use of Form N–1A by More Than One Registrant or Series or by a Multiple Class Fund.* Form N–1A may be used by one or more Registrants, Series, or classes of a Multiple Class Fund.

(i) When disclosure is provided for more than one Fund or class of shares, disclosure should be presented in a format designed to communicate the information effectively. To meet this requirement, Funds may order or group the response to any Item in any manner that organizes the information into readable and comprehensible segments and is consistent with the intent of the prospectus to provide clear and concise information about the Funds or classes. Funds are encouraged to use, as appropriate, tables, side-by-side comparisons, captions, bullet points, or other organizational techniques in presenting disclosure for multiple Funds or classes.

(ii) Paragraph (a) requires Funds to disclose the information required by Items 2 and 3 in numerical order at the front of the prospectus and not to precede the Items by other information. As a general matter, multiple Funds or Multiple Class Funds may depart from that requirement if necessary to present the required information clearly and effectively (although the order of information required by each Item must remain the same). For example, the prospectus may present all the Item 2 information for several Funds followed by all the Item 3 information for the Funds, or may present Items 2 and 3 for each of several Funds sequentially. Other presentations also would be acceptable if they are consistent with the Form's intent to disclose the information required by Items 2 and 3 in a standard order at the beginning of the prospectus.

(d) *Defined Contribution Plans.* Form N–1A may be used by a Fund that is offered as an investment alternative in a participant-directed defined contribution plan that meets the requirements for qualification under the Internal Revenue Code. A Fund may omit the information required by Items 7 and 8 of this Form from a Fund's prospectus that is used to offer Fund shares to plan participants.

(e) *Dates.* The requirements for dating the prospectus under rule 423 under the Securities Act (17 CFR 230.423) apply equally to dating the SAI. The SAI should be made available at the same time the prospectus becomes available for purposes of rules 430 and 460 under the Securities Act (17 CFR 230.430 and 230.460).

(f) *Sales Literature.* Sales literature may be included in the prospectus so long as the amount of this information does not add substantial length to the prospectus or its placement does not obscure essential disclosure.

D. Incorporation by Reference

1. Specific rules for incorporation by reference in Form N–1A:

(a) A Fund may not incorporate by reference into a prospectus information that Part A of this Form requires to be included in a prospectus, except as specifically permitted by Part A of the Form.

(b) A Fund may incorporate by reference any or all of the SAI into the prospectus (but not to provide any information required by Part A to be in the prospectus) without delivering the SAI with the prospectus.

(c) A Fund may incorporate by reference into the SAI or Other Information sections information that Parts B and C of this Form require to be included in the SAI or Other Information sections of a Fund's registration statement.

2. General Requirements:

All incorporation by reference must comply with the requirements of this Form and the Commission's rules on

incorporation by reference including: rule 10(d) of Regulation S-K under the Securities Act (17 CFR 229.10(d)) (general rules on incorporation by reference, which, among other things, prohibit, unless specifically required by this Form, incorporating by reference a document that includes incorporation by reference to another document, and limits incorporation to documents filed within the last 5 years, with certain exceptions); rule 411 under the Securities Act (17 CFR 230.411) (general rules on incorporation by reference in a prospectus); rule 303 of Regulation S–T (17 CFR 232.303) (specific requirements for electronically filed documents); and rules 0–4, 8b–23 and 8b–32 under the Investment Company Act (17 CFR 270.0–4, 270.8b–23 and 270.8b–32) (additional rules on incorporation by reference for Funds).

PART A INFORMATION REQUIRED IN A PROSPECTUS

Item 1. Front and Back Cover Pages

(a) *Front Cover Page.* Include the following information on the outside front cover page of the prospectus:

(1) The Fund's name.

(2) The date of the prospectus.

(3) The statement required by rule 481(b)(1) under the Securities Act.

(b) *Back Cover Page.* Include the following information on the outside back cover page of the prospectus:

(1) The Fund's name, the Registrant's Investment Company Act file number, and if the Fund is a Series, also provide the Registrant's name.

(2) The date of the SAI and a statement that the SAI includes additional information about the Fund that is available, without charge, upon request. Also explain how shareholder inquiries can be made. Provide a toll-free (or collect) telephone number to call to request the SAI, the Fund's annual report if required by Item 5, or other information required to be provided to investors, and to make shareholder inquiries.

Instructions.

1. If applicable, a Fund may indicate that this information is available on its Internet site and by E-mail request.

2. When a request for the SAI is received, the Fund should send the SAI, by first-class mail or other means designed to ensure equally prompt delivery, within 3 business days of receipt of the request.

(3) A statement whether and from where information is incorporated by reference into the prospectus as permitted by General Instruction D and, unless delivered with the prospectus, explain that the Fund will provide information incorporated by reference without charge, upon request (referencing the telephone number provided in response to paragraph (b)(2)).

Instruction. The information about incorporation by reference can be combined with the statement required under paragraph (b)(2).

(4) A statement that information about the Fund (including the SAI) can be reviewed and copied at the Commission's Public Reference Room in Washington, D.C. Also state that information on the operation of the public reference room may be obtained by calling the Commission at 1–800-SEC–0330. State that reports and other information about the Fund are available on the Commission's Internet site at http://www.sec.gov and that copies of this information may be obtained, upon payment of a duplicating fee by writing the Public Reference Section of the Commission, Washington, D.C. 20549–6009.

Item 2. Risk/Return Summary: Investments, Risks, and Performance
Include the following information in the same order and in the same or substantially similar question-and-answer format:

(a) *What are the Fund's goals?*

Disclose the Fund's investment objectives. A Fund also may identify its type or category (*e.g.*, that it is a Money Market Fund or balanced fund).

(b) *What are the Fund's main investment strategies?*

(1) Based on the information given in response to Item 4(a), summarize how the Fund intends to achieve its investment objectives by identifying the Fund's principal investment strategies (including the type or types of securities in which the Fund invests or will invest principally) and any policy to concentrate in securities of issuers in a particular industry or group of industries.

(2) Provide disclosure to the following effect: Additional information about the Fund's investments is available in the Fund's annual and semi-annual reports to shareholders. In particular, the Fund's annual report discusses the relevant market conditions and investment strategies used by the Fund's investment adviser that materially affected the Fund's performance during the last fiscal year. You may obtain these reports at no cost by calling (_____).

Instructions

1. Provide a toll-free (or collect) telephone number for investors to request the annual or semi-annual reports. If applicable, a Fund may indicate that its annual or semi-annual reports are available on its Internet site and by E-mail request.

2. For a Fund that provides the information required by Item 5 (Management's Discussion of Fund Performance) in its prospectus (and not the annual report) or for a Money Market Fund, do not provide the disclosure required by the second sentence of paragraph (b)(2).

3. When a request for an annual or semi-annual report is received, the Fund should send the applicable report, by first-class mail or other means designed to ensure equally prompt delivery, within 3 business days of the request.

(c) *What are the main risks of investing in the Fund?*

(1) *Narrative Risk Disclosure.*

(i) Based on the information given in response to Item 4(c), summarize the principal risks of investing in the Fund, including the risks to which the Fund's portfolio as a whole is subject and the circumstances reasonably likely to affect adversely the Fund's net asset value, yield, and total return. Unless the Fund is a Money Market Fund, disclose that loss of money is a risk of investing in the Fund. If the Fund is a Money Market Fund, see paragraph (c)(1)(iii) below.

Instruction. A Fund also may discuss the potential rewards of investing in the Fund so long as the discussion provides a balanced presentation of the Fund's risks and rewards.

(ii) Describe the characteristics of an investor for whom the Fund may be an appropriate or inappropriate investment (e.g., based on the investor's time horizon, willingness to tolerate fluctuations in principal, or on the tax consequences of investing in the Fund).

(iii) If the Fund is a Money Market Fund, state that: ''An investment in the Fund is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency. Although the Fund seeks to preserve the value of your investment at $1.00 per share, it is possible to lose money by investing in the Fund.'' If a Money Market Fund is a single state fund under rule 2a-7, disclose that investing in the Fund is riskier than investing in other types of Money Market Funds, because the Fund may invest a significant portion of its assets in a single issuer.

Instruction. A Fund may omit the disclosure required by the last sentence of paragraph (c)(1)(iii) if the Fund limits its investments in a single issuer to no more than 5% of the Fund's assets in a single issuer.

(iv) If the Fund is not a Money Market Fund but is advised by or sold through a bank, state that: ''An investment in the Fund is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency.''

(v) If applicable, state that the Fund is non-diversified, describe the effect of non-diversification (*e.g.*, disclose that, compared to other funds, the Fund may invest a greater percentage of its assets in a particular issuer), and summarize the risks of investing in a non-diversified fund.

(2) *Risk/Return Bar Chart and Table.*

(i) Include the bar chart and table required by paragraphs (c)(2)(ii) and (iii) of this section under a subheading that refers to both risk and performance. Explain how the information illustrates the Fund's risks and performance (*e.g.*, by stating that the information illustrates the Fund's risks and performance by showing changes in the Fund's performance from year to year and by showing how the Fund's average annual returns for 1, 5, and 10 years compare to those of a broad measure of market performance). Provide a statement to the effect that how the Fund has performed in the past is not necessarily an indication of how the Fund will perform in the future.

(ii) If the Fund has annual total returns for at least one calendar year, provide a bar chart showing the Fund's annual total returns for each of the last 10 calendar years (or for the life of the Fund if less than 10 years), but only for periods subsequent to the effective date of the Fund's registration statement. Present each return in numerical form next to each bar.

(iii) Accompany the bar chart with a table showing the Fund's average annual total returns for 1, 5, and 10 year periods ending on the date of the most recently completed fiscal year (or for the life of the Fund, if shorter) and the returns of an appropriate broad-based securities market index as defined in Instruction 5 to Item 5(b) for the same periods. For a Money Market Fund, provide the Fund's 7-day yield ending on the date of the most recently completed fiscal year and a toll-free (or collect) telephone number that investors can use to obtain the Fund's current 7-day yield.

Instructions.

1. Bar Chart.

(a) Provide annual returns beginning with the latest calendar year, but only for periods subsequent to the effective date of the Fund's registration statement. Calculate annual returns using the Instructions to Item 9(a), except base the calculations on calendar years. If the Fund charges sales loads or account fees, state that sales fees (loads) or account fees are not reflected in the bar chart and that, if these fees were included, returns would be less than those shown.

(b) For a Fund that provides annual total returns for only one calendar year or for a Fund that does not include the bar chart because it does not have annual total returns for a full calendar year, modify, as appropriate, the narrative explanation required by paragraph (c)(2)(i) (*e.g.*, by stating that the information shows the Fund's risks and performance by comparing the Fund's performance to a broad measure of market performance).

2. *Table.*

(a) Calculate the Fund's average annual total returns under Item 21(b)(1) and a Money Market Fund's 7-day yield under Item 21(a).

(b) In addition to the required broad-based securities market index, a Fund may include information for one or more additional indexes as permitted by Instruction 6 to Item 5(b). If an additional index is included, disclose information about the additional index in the narrative explanation accompanying the bar chart and table (e.g., by stating that the information shows how the Fund's performance compares to the returns of an index of funds with similar investment objectives).

(c) If the Fund selects a different index from an index used in a table for the immediately preceding period, explain the reason(s) for the change and provide information for both the newly selected and the former index.

(d) A Fund (other than a Money Market Fund) may include the Fund's yield calculated under Item 21(b)(2). Any Fund may include its tax-equivalent yield calculated under Item 21. If a Fund's yield is included, provide a toll-free (or collect) telephone number that investors can use to obtain current yield information.

3. Multiple Class Funds.

(a) When a Multiple Class Fund offers more than one class of shares in the prospectus, provide annual total returns in the bar chart for the class that has annual total return information for the longest period of time over the last 10 years. When the prospectus offers two or more classes that have annual total returns for at least 10 years or annual total returns for the same time period but less than 10 years, provide returns for the class with the greatest net assets as of the end of the Fund's most recent calendar year. Identify the class of shares for which returns are shown.

(b) Provide average annual total returns in the table for each class offered in the prospectus.

4. *Change in Investment Adviser.* If the Fund has not had the same adviser during the last 10 calendar years, the Fund may begin the bar chart and the performance information in the table on the date that the current adviser began to provide advisory services to the Fund subject to the conditions in Instruction 11 of Item 5(b).

Item 3. Risk/Return Summary: Fee Table

Include the following information in the same question-and-answer format required by Item 2 (unless the Fund offers its shares exclusively to one or more separate accounts):

What are the Fund's fees and expenses?

This table describes the fees and expenses you may pay in connection with an investment in the Fund.

Shareholder Fees (fees paid directly from your account)

Maximum Sales Fee (Load) Imposed on Purchases (as a percentage of offering price)	_____%
Maximum Deferred Sales Fee (Load) (as a percentage of ____)	_____%
Maximum Sales Fee (Load) Imposed on Reinvested Dividends [and other Distributions] (as a percentage of ____)	_____%
Redemption Fee (as a percentage of amount redeemed, if applicable)	_____%
Exchange Fee	_____%
Maximum Account Fee	_____%

Annual Fund Operating Expenses (expenses that are deducted from Fund assets)

Management Fees	_____%
Marketing (12b–1) Fees	_____%
Other Expenses	_____%
_____	%
_____	%
_____	%
Total Annual Fund Operating Expenses	_____%

Example

This Example is intended to help you compare the cost of investing in the Fund to the cost of investing in other mutual funds.

The Example assumes that you invest $10,000 in the Fund for the time periods indicated and then redeem all your shares at the end of those periods. The Example also assumes a 5% return on your investment each year and that the Fund's operating expenses remain the same. Although your actual costs may be higher or lower, based on these assumptions your costs would be:

1 year	3 years	5 years	10 years
$_____	$_____	$_____	$_____

You would pay the following expenses if you did not redeem your shares:

1 year	3 years	5 years	10 years
$_____	$_____	$_____	$_____

The Example does not reflect sales fees (loads) on reinvested dividends [and other distributions]. If these fees were included, your costs would be higher.

Instructions.

1. *General.*

(a) Round all dollar figures to the nearest dollar and all percentages to the nearest hundredth of one percent.

(b) Include the narrative explanations in the order indicated. A Fund may modify the narrative explanations if the explanation contains comparable information to that shown.

(c) Include the caption ''Maximum Account Fees'' only if the Fund charges these fees. A Fund may omit other captions if the Fund does not charge the fees or expenses covered by the captions.

(d)(i) If the Fund is a Feeder Fund, reflect the aggregate expenses of the Feeder Fund and the Master Fund in a single fee table using the captions provided. In a footnote to the fee table, state that the table and Example reflect the expenses of both the Feeder and Master Funds.

(ii) If the prospectus offers more than one class of a Multiple Class Fund or more than one Feeder Fund that invests in the same Master Fund, provide a separate response for each class or Feeder Fund.

2. *Shareholder Fees (Loads).*

(a)(i) ''Maximum Deferred Sales Fee (Load)'' includes the maximum total deferred sales load payable upon redemption, in installments, or both, expressed as a percentage of the amount or amounts stated in response to Item 8(a), except that, for a sales load based on net asset value at the time of purchase, show the sales load as a percentage of the *offering price* at the time of purchase. If applicable, a Fund may include in a footnote to the table a tabular presentation showing the amount of deferred sales loads over time or a narrative explanation of the loads (*e.g.*, ____% in the first year after purchase, declining to ____% in the ____ year and eliminated thereafter).

(ii) If more than one type of sales load is charged (*e.g.*, a deferred sales load and a front-end sales load), the first caption in the table should read ''Maximum Sales Fee (Load)'' and show the maximum cumulative percentage. Show the percentage amounts and the terms of each sales charge comprising that figure on separate lines below.

(iii) If a sales load is imposed on shares purchased with reinvested capital gains distributions or returns of capital, include the bracketed words in the third caption.

(b) ''Redemption Fee'' includes a fee charged for any redemption of the Fund's shares, but does not include a deferred sales load charged upon redemption.

(c) ''Exchange Fee'' includes the maximum fee charged for any exchange or transfer of interest from the Fund to another fund. If applicable, the Fund may include in a footnote to the table a tabular presentation of the range of exchange fees or a narrative explanation of the fees.

(d) ''Maximum Account Fees.'' If all shareholders are charged an account fee, include a caption describing the maximum account fee (*e.g.*, ''Maximum Account Maintenance Fee'' or ''Maximum Cash Management Fee''). State the maximum annual account fee as either a fixed dollar amount or a percentage of assets and include in a parenthetical to the caption the basis on which any percentage is calculated. If an account fee is charged only to accounts that do not meet a certain threshold (*e.g.*, accounts under $2,500), the Fund may include the threshold in a parenthetical to the caption or footnote to the table. The Fund may include an explanation of any non-recurring account fee in a parenthetical to the caption or in a footnote to the table. For purposes of this Instruction, all shareholders are deemed to pay an account fee:

(i) Despite waiver of the fee for certain shareholders, such as employees of the Fund's investment adviser and investors with large account balances; and

(ii) Unless any shareholder not wishing to use the services covered by the fee may avoid the fee and a significant number of shareholders do, in fact, avoid the fee.

3. *Annual Fund Operating Expenses.*

(a) ''Management Fees'' include investment advisory fees (including any fees based on the Fund's performance), any other management fees payable to the investment adviser or its affiliates, and administrative fees payable to the investment adviser or its affiliates not included as ''Other Expenses.''

(b) ''Marketing (12b–1) Fees'' include all distribution or other expenses incurred during the most recent fiscal year under a plan adopted pursuant to rule 12b–1 (17 CFR 270.12b–1). Disclose the amount of any distribution or similar expenses deducted from the Fund's assets other than pursuant to a rule 12b–1 plan under an appropriate caption or a subcaption of ''Other Expenses.''

(c)(i) ''Other Expenses'' include all expenses not otherwise disclosed in the table that are deducted from the Fund's assets or charged to all shareholder accounts. The amount of expenses deducted from the Fund's assets are the amounts shown as expenses in the Fund's statement of operations (including increases resulting from complying with paragraph 2(g) of rule 6–07 of Regulation S–X (17 CFR 210.6–07).

(ii) ''Other Expenses'' do not include extraordinary expenses as determined by using generally accepted accounting principles (*see* Accounting Principles Board Opinion No. 30). If extraordinary expenses were incurred that materially affected the Fund's ''Other Expenses,'' disclose in a footnote to the table what ''Other Expenses'' would have been had the extraordinary expenses been included.

(iii) The Fund may subdivide this caption into no more than three subcaptions that identify the largest expense or expenses comprising ''Other Expenses,'' but must include a total of all ''Other Expenses.'' Alternatively, the

Fund may include the components of ''Other Expenses'' in a parenthetical to the caption.

(d) (i) Base the percentages of ''Annual Fund Operating Expenses'' on amounts incurred during the most recent fiscal year. If the Fund has changed its fiscal year and as a result, the most recent fiscal year is less than three months, use the fiscal year prior to the most recent fiscal year as the basis for determining ''Annual Fund Operating Expenses.''

(ii) If there have been any changes in ''Annual Fund Operating Expenses'' that would materially affect the information disclosed in the table:

(A) Restate the expense information using the current fees as if they had been in effect during the previous fiscal year; and

(B) In a footnote to the table, disclose that the expense information in the table has been restated to reflect current fees.

(iii) A change in ''Annual Fund Operating Expenses'' means either an increase or a decrease in expenses that occurred during the most recent fiscal year or that is expected to occur during the current fiscal year. It includes the elimination of any expense reimbursement or fee waiver arrangement, in which case include in the table the expenses that would have been incurred had there been no reimbursement or waiver. A change in ''Annual Fund Operating Expenses'' does not include:

(A) Circumstances when expenses decrease in relation to the Fund's size so as to make any reimbursement or waiver arrangement inoperative; or

(B) A decrease in operating expenses as a percentage of assets due to economies of scale or breakpoints in a fee arrangement resulting from an increase in the Fund's assets.

(e) If there were expense reimbursement or fee waiver arrangements that reduced any Fund operating expenses and will continue to reduce them in the current fiscal year (regardless of whether the arrangement has been guaranteed):

(i) Revise the appropriate caption by adding ''After Expense Reimbursements'' or a similar phrase;

(ii) State the amount of actual expenses incurred (*i.e.*, net of the amount reimbursed or waived); and

(iii) Disclose in a footnote to the table the amount the expenses or fees would have been absent the reimbursement or waiver.

4. *Example.*

(a) Assume that the percentage amounts listed under ''Annual Fund Operating Expenses'' remain the same in each year of the 1, 3, 5, and 10 year periods, except that an adjustment may be made to reflect reduced annual expenses resulting from completion of the amortization of initial organization expenses.

(b) For any breakpoint in any fee, assume that the amount of the Fund's assets remains constant as of the level at the end of the most recently completed fiscal year.

(c) Assume reinvestment of all dividends and distributions.

(d) Reflect recurring and non-recurring fees charged to all investors other than any exchange fees or any sales loads on shares purchased with reinvested dividends or other distributions. If the Fund charges sales loads on reinvested dividends or other distributions, include the narrative explanation following the Example and include the bracketed words when sales loads are charged on reinvested capital gains distributions or returns of capital. Reflect any shareholder account fees collected by dividing the total amount of the fees collected during the most recent fiscal year by all Funds whose shareholders are subject to the fees by the total average net assets of the Funds. Add the resulting percentage to ''Annual Fund Operating Expenses'' and assume that it remains the same in each of the 1, 3, 5, and 10 year periods. A Fund that charges account fees based on a minimum account requirement exceeding $10,000 may adjust its account fees based on the amount of the fee in relation to the Fund's minimum account requirement.

(e) Reflect any deferred sales load by assuming redemption of the entire account at the end of the year in which the load is due. In the case of a deferred sales load that is based on the Fund's net asset value at the time of payment, assume that the net asset value at the end of each year includes the 5% annual return for that and each preceding year.

(f) Include the second 1, 3, 5, and 10 year periods and related narrative explanation only if a sales load or other fee is charged upon redemption.

5. *New Funds.* A new Fund is a Fund that does not include in Form N–1A financial statements reporting operating results or that includes financial statements for the Fund's initial fiscal year reporting operating results for a period of less than 10 months. The following Instructions apply to new Funds.

(a) Base the percentages expressed in ''Annual Fund Operating Expenses'' on payments that will be made, estimating amounts of ''Other Expenses'' (after any expense reimbursement or waiver). Disclose in a footnote to the table that ''Other Expenses'' are based on estimated amounts for the current fiscal year.

(b) If expense reimbursement or waiver arrangements are expected to reduce any Fund operating expense or the estimate of ''Other Expenses'' (regardless of whether the arrangement has been guaranteed):

(i) Revise the appropriate caption by adding ''After Expense Reimbursements'' or a similar phrase;

(ii) State the amount of actual expenses expected to be incurred or the actual estimate (*i.e.*, net of the amount expected to be reimbursed or waived); and

(iii) Disclose in a footnote to the table what the expenses (or estimates) would have been absent the reimbursement or waiver.

(c) Complete only the one and three year period portions of the Example and estimate any shareholder account fees collected.

Item 4. Investment Objectives, Principal Strategies, and Related Risks

(a) *Investment Objectives.* State the Fund's investment objectives and, if applicable, state that those objectives may be changed without shareholder approval.

(b) *Implementation of Investment Objectives.* Describe how the Fund intends to achieve its investment objectives. As part of the discussion:

(1) Describe the Fund's principal strategies, including the particular type or types of securities in which the Fund principally invests or will invest.

Instructions.

1. A strategy includes any policy, practice, or technique used by the Fund to achieve the Fund's investment objectives.

2. Whether a particular strategy, including a strategy to invest in a particular type of security, is a principal strategy depends on the strategy's anticipated importance in achieving the Fund's investment objectives, and how the strategy affects the Fund's potential risks and returns. In determining what is a principal strategy, consider, among other things, the amount of the Fund's assets expected to be committed to the practice, the amount of the Fund's assets expected to be placed at risk by the practice, and the likelihood of losing some or all of those assets.

3. A negative strategy (*e.g.*, a strategy not to invest in a particular type of security or not to borrow money) is not a principal strategy.

4. Disclose any policy specified in Item 12(c)(1) that is a principal strategy. A Fund, at its option, may disclose that

the policy may not be changed without shareholder approval.

(2) Explain in general terms how the Fund's adviser decides what securities to buy and sell (*e.g.*, for an equity fund, discuss the factors that the adviser considers in deciding to buy the stock of one company rather than another, and how the adviser decides when to sell that stock).

(3) Disclose any policy to concentrate (*i.e.*, invest 25% or more of the Fund's total assets) in securities of issuers in a particular industry or group of industries. For a Money Market Fund that is a single state fund as defined in rule 2a–7, discuss the Fund's concentration in securities issued by a particular state (or particular subdivision of the state) or by issuers located within the state (or subdivision).

(4) For a Fund (other than a Money Market Fund) that expects its portfolio turnover rate to equal or exceed 100% in the coming year:

(i) Disclose the anticipated rate of the Fund's portfolio turnover for the coming year and explain what that rate means (*e.g.*, that a turnover rate of 200% is equivalent to the Fund buying and selling all of the securities in its portfolio twice in the course of a year).

(ii) Explain the tax consequences to shareholders of the Fund's portfolio turnover, and how trading costs associated with the Fund's portfolio turnover may affect the Fund's performance.

(c) *Risks.* Disclose the principal risks of investing in the Fund, including the risks to which the Fund's particular portfolio as a whole is expected to be subject and the circumstances reasonably likely to affect adversely the Fund's net asset value, yield, or total return.

(d) *Non-Diversified Funds.* If applicable, state that the Fund is non-diversified, describe the effect of non-diversification (*e.g.*, disclose that, compared to other funds, the Fund may invest a greater percentage of its assets in a particular issuer) and disclose the risks of investing in a non-diversified fund.

(e) *Temporary Defensive Positions.* Disclose, if applicable, that the Fund, to avoid losses in response to adverse market, economic, political, or other conditions, may take temporary defensive positions that depart from the Fund's principal strategies. Indicate the percentage of the Fund's assets that may be committed to temporary defensive positions, the risks, if any, associated with these positions and the likely effect of these positions on the Fund's performance.

Item 5. Management's Discussion of Fund Performance

Disclose the following information unless the Fund is a Money Market Fund or the information is included in the Fund's latest annual report to shareholders under rule 30d–1 (17 CFR 270.30d–1) and the Fund provides a copy of the annual report, upon request and without charge, to each person to whom a prospectus is delivered.

(a) Discuss the factors that materially affected the Fund's performance during the most recently completed fiscal year, including the relevant market conditions and the investment strategies and techniques used by the Fund's investment adviser.

(b)(1) Provide a line graph comparing the initial and subsequent account values at the end of each of the most recently completed 10 fiscal years of the Fund (or for the life of the Fund, if shorter) but only for periods subsequent to the effective date of the Fund's registration statement. Assume a $10,000 initial investment at the beginning of the first fiscal year in an appropriate broad-based securities market index for the same period.

(2) In a table placed within or next to the graph, provide the Fund's average annual total returns for the 1, 5, and 10 year periods as of the end of the last day of the most recent fiscal year computed in accordance with Item 21(b)(1). Include a statement accompanying the graph that past performance does not predict future performance.

Instructions.

1. *Line Graph Computation.*

(a) Assume that the initial investment was made at the offering price last calculated on the business day before the first day of the first fiscal year.

(b) Base subsequent account values on the net asset value of the Fund last calculated on the last business day of the first and each subsequent fiscal year.

(c) Calculate the final account value by assuming the account was closed and redemption was at the price last calculated on the last business day of the most recent fiscal year.

(d) Base the line graph on the Fund's required minimum initial investment if that amount exceeds $10,000.

2. *Sales Load.* Reflect any sales load (or any other fees charged at the time of purchasing shares or opening an account) by beginning the line graph at the amount that actually would be invested (*i.e.*, assume that the maximum sales load (and other charges deducted from payments) is deducted from the initial $10,000 investment). For a Fund that charges a contingent deferred sales load, assume the deduction of the maximum deferred sales load (or other charges) that would be applicable for a complete redemption that received the price last calculated on the last business day of the most recent fiscal year. For any other deferred sales load, assume the deduction in the amount(s) and at the time(s) the load actually would have been deducted.

3. *Dividends and Distributions.* Assume all of the Fund's dividends and distributions are reinvested on the reinvestment dates during the period, and reflect any sales load charged upon reinvestment of dividends or distributions or both.

4. *Account Fees.* Reflect recurring fees that are charged to all accounts.

(a) For any account fees that vary with the size of the account, assume a $10,000 account size.

(b) Reflect, as appropriate, any recurring fees charged to shareholder accounts that are paid other than by redemption of the Fund's shares.

(c) Reflect an annual account fee that applies to more than one Fund by allocating the fee in the following manner: divide the total amount of account fees collected during the year by the Funds' total average net assets, multiply the resulting percentage by the average account value for each Fund and reduce the value of each hypothetical account at the end of each fiscal year during which the fee was charged.

5. *Appropriate Index.* For purposes of this Item, an ''appropriate broad-based securities market index'' is one that is administered by an organization that is not an affiliated person of the Fund, its investment adviser or principal underwriter, unless the index is widely recognized and used. Adjust the index to reflect the reinvestment of dividends on securities in the index, but do not reflect the expenses of the Fund.

6. *Additional Indexes.* In addition to the required broad-based index comparison, a Fund is encouraged to compare its performance to other more narrowly based indexes that reflect the market sectors in which the Fund invests. A Fund also may compare its performance to an additional broad-based index, or to a non-securities index (*e.g.*, the Consumer Price Index), so long as the comparison is not misleading.

7. *Change in Index.* If the Fund uses a different index from the one used for the immediately preceding fiscal year, explain the reason(s) for the change and compare the Fund's annual change in the value of an investment in the hypothetical account with the new and former indexes.

8. *Other Periods.* The line graph may cover earlier fiscal years and may

compare the ending values of interim periods (*e.g.*, monthly or quarterly ending values), so long as those periods are after the effective date of the Fund's registration statement.

9. *Scale.* The axis of the graph measuring dollar amounts may use either a linear or a logarithmic scale.

10. *New Funds.* A Fund is not required to include the information specified by this Item in its prospectus (or annual report), unless Form N–1A (or the annual report) contains audited financial statements covering a period of at least 6 months.

11. *Change in Investment Adviser.* If the Fund has not had the same investment adviser for the previous 10 fiscal years, the Fund may begin the line graph on the date the current adviser began to provide advisory services to the Fund so long as:

(a) Neither the current adviser nor any affiliate is or has been in ''control'' of the previous adviser under section 2(a)(9) (15 U.S.C. 80a–2(a)(9));

(b) The current adviser employs no officer(s) of the previous adviser or employees of the previous adviser who were responsible for providing investment advisory or portfolio management services to the Fund; and

(c) The graph is accompanied by a statement explaining that previous periods during which the Fund was advised by another investment adviser are not shown.

(c) Discuss the effect of any policy or practice of maintaining a specified level of distributions to shareholders on the Fund's investment strategies and per share net asset value during the last fiscal year and the extent to which the Fund's distribution policy resulted in distributions of capital.

Item 6. Management, Organization, and Capital Structure

(a) *Management.*

(1) *Investment Adviser.*

(i) Provide the name and address of each investment adviser. Describe the investment adviser's experience as an investment adviser and the advisory services it provides to the Fund.

(ii) Describe each investment adviser's compensation as follows:

(A) If the Fund has operated for a full fiscal year, state the fee paid to the adviser for the most recent fiscal year as a percentage of average net assets. If the Fund has not operated for a full fiscal year, state what the adviser's fee will be as a percentage of average net assets, including any breakpoints.

(B) If the adviser's fee is not based on a percentage of average net assets (*e.g.*, the adviser receives a performance-based fee), describe the basis of the adviser's compensation.

Instructions.

1. If the Fund changed advisers during the fiscal year, describe the compensation and the dates of service for each adviser.

2. Explain any changes in the basis of computing the adviser's compensation during the fiscal year.

(2) *Portfolio Manager.* State the name, title, and length of service of the person or persons employed by or associated with the Fund's investment adviser (or the Fund) who are primarily responsible for the day-to-day management of the Fund's portfolio and each person's business experience during the past 5 years.

Instructions.

1. This requirement does not apply to a Money Market Fund or to a Fund that has an investment objective to replicate the performance of an index.

2. Information is required only about the person(s) who serves as the Fund's portfolio manager even though the manager may be subject to the oversight, approval, or ratification of a committee.

3. Indicate that a committee makes investment decisions for the Fund if the organizational arrangements of the adviser (or the Fund, if internally managed) require all investment decisions to be made by a committee and no person(s) is primarily responsible for making recommendations to that committee.

(3) *Legal Proceedings.* Describe any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the Fund or the Fund's investment adviser or principal underwriter is a party. Include the name of the court in which the proceedings are pending, the date instituted, the principal parties involved, a description of the factual basis alleged to underlie the proceeding, and the relief sought. Include similar information as to any proceedings instituted, or known to be contemplated, by a governmental authority.

Instruction. For purposes of this requirement, legal proceedings are material only to the extent that they are likely to have a material adverse effect on the Fund or the ability of the investment adviser or principal underwriter to perform its contract with the Fund.

(b) *Fund Organization.* If the Fund is organized outside the United States, disclose the country where the Fund is organized.

(c) *Capital Stock.* Disclose any:

(1) Restrictions on the right freely to retain or dispose of the Fund's shares; and

(2) Material obligations or potential liabilities associated with owning the Fund's shares (not including investment risks).

Item 7. Shareholder Information

(a) *Purchase of Fund Shares.* Describe the procedures for purchasing the Fund's shares, including:

(1) A statement as to when calculations of net asset value are made and that the price at which a purchase is effected is based on the next calculation of net asset value after the order is placed.

(2) A statement identifying in a general manner any national holidays when shares will not be priced and specifying any additional local or regional holidays when the Fund will be closed.

Instruction. If the Fund has portfolio securities primarily listed on foreign exchanges that trade on weekends or other days when the Fund does not price its shares, disclose that the net asset value of the Fund's shares may change on days when shareholders will not be able to purchase or redeem the Fund's shares.

(3) Any minimum initial or subsequent investment.

(b) *Redemption of Fund Shares.* Describe the procedures for redeeming the Fund's shares, including:

(1) Any restrictions on redemptions.

(2) Any redemption charges, including how these charges will be collected and under what circumstances the charges will be waived.

(3) An explanation if the Fund, under normal circumstances, intends to redeem in kind.

Instruction. If applicable, a Fund may describe redemption procedures under rule 18f–1.

(4) Any procedure that a shareholder can use to sell shares to the Fund or its underwriter through a broker-dealer noting any charges that may be imposed for such service.

Instruction. The specific fees for such service need not be disclosed.

(5) The circumstances, if any, under which the Fund may redeem shares involuntarily in accounts below a certain number or value of shares.

(6) The circumstances, if any, under which the Fund may delay honoring a request for redemption for a certain time after a shareholder's investment.

(7) Any restrictions on, or costs associated with, transferring shares held in street name accounts.

(c) *Dividends and Distributions.* Describe the Fund's policy with respect

to dividends and distributions, including any options shareholders may have as to the receipt of dividends and distributions.

(d) *Tax Consequences.*

(1) Describe the tax consequences to shareholders of buying, holding, exchanging and selling the Fund's shares, including, as applicable, that:

(i) The Fund intends to make distributions that may be taxed as ordinary income and capital gains. If the Fund, as a result of its investment objectives or strategies, expects its distributions to consist primarily of ordinary income (or short-term gains that are taxed as ordinary income) or capital gains, provide disclosure to that effect.

(ii) The Fund will provide each shareholder by [specify a date] with specific information about the amount of ordinary income and capital gains distributed to the shareholder during the prior calendar year.

(iii) The Fund's distributions, whether received in cash or reinvested in additional shares of the Fund, may be subject to federal income tax.

(iv) An exchange of the Fund's shares for shares of another fund will be treated as a sale of the Fund's shares and any gain on the transaction may be subject to federal income tax.

(2) For a Fund that holds itself out as investing in securities generating tax-exempt income:

(i) Modify the disclosure required by paragraph (d)(1) to reflect that the Fund intends to distribute tax-exempt income.

(ii) Also disclose, as applicable, that:

(A) The Fund may invest a portion of its assets in securities that generate income that is not exempt from federal or state income tax;

(B) Income exempt from federal tax may be subject to state and local income tax;

(C) Any capital gains distributed by the Fund may be taxable; and

(D) A portion of the tax-exempt income received from the Fund may be treated as a tax preference item for purposes of determining whether a shareholder is subject to the federal alternative minimum tax.

(3) If the Fund does not expect to qualify as a regulated investment company under Subchapter M of the Internal Revenue Code (I.R.C. 851 *et seq.*), explain the tax consequences of not qualifying. If the Fund expects to pay an excise tax under the Internal Revenue Code (I.R.C. 4982) with respect to its distributions, explain the consequences of paying the excise tax.

Item 8. Distribution Arrangements

(a) *Sales Loads.*

(1) Describe any sales loads, including deferred sales loads, charged to purchasers of the Fund's shares. Include in a table any front-end sales load (and each breakpoint in the load, if any) as a percentage of both the offering price and the net amount invested.

Instructions.

1. In providing the information required by this paragraph, refer to sales loads as ''sales fees (loads).''

2. If the Fund charges a front-end load, explain that the term ''offering price'' includes the front-end load.

3. Disclose, if applicable, that sales loads are imposed on shares, or amounts representing shares, that are purchased with reinvested dividends or other distributions.

4. Discuss, if applicable, how deferred sales loads are charged and calculated, including:

(a) Whether the specified percentage of the load is based on the offering price, or the lesser of the offering price or net asset value at the time the load is paid.

(b) The amount of the load as a percentage of both the offering price and the net amount invested.

(c) A description of how the load is calculated (*e.g.*, in the case of a partial redemption, whether or not the load is calculated as if shares or amounts representing shares not subject to a load are redeemed first, and other shares or amounts representing shares are then redeemed in the order purchased).

(d) If applicable, the method of paying an installment load (*e.g.*, by withholding of dividend payments, involuntary redemptions, or separate billing of a shareholder's account).

(2) Unless disclosed in response to paragraph (a)(1) or in the SAI, describe any other arrangements that result in breakpoints in, or elimination of, sales loads (*e.g.*, letters of intent, accumulation plans, dividend reinvestment plans, withdrawal plans, exchange privileges, employee benefit plans, and redemption reinvestment plans). Identify each class of individuals or transactions to which the arrangements apply and state each different breakpoint as a percentage of both the offering price and the amount invested.

(b) *Rule 12b–1 Fees and Service Fees.*

(1) If the Fund has adopted a plan under rule 12b–1, state the amount of the fee payable under the plan and provide disclosure to the following effect:

(i) The Fund has adopted a plan under rule 12b–1 that allows the Fund to pay marketing fees for the sale and distribution of its shares; and

(ii) Because these fees are paid out of the Fund's assets on an on-going basis, over time these fees will increase the cost of your investment and may cost you more than paying other types of sales loads.

Instructions.

1. If the Fund pays service fees under its rule 12b–1 plan, modify this disclosure to reflect the payment of these fees (*e.g.*, by indicating that the Fund pays marketing and other fees for the sale of its shares and for services provided to shareholders). For purposes of this paragraph, service fees have the same meaning given that term under rule 2830(b)(9) of the NASD Conduct Rules (NASD Manual (CCH) 4622).

2. In providing the information required by this paragraph, refer to rule 12b–1 fees as ''marketing fees.''

(2) If the Fund pays service fees other than pursuant to a plan under rule 12b–1, disclose the amount of the fee and indicate that the fees are used to provide services to shareholders.

(c) *Multiple Class and Master-Feeder Funds.*

(1) Describe the main features of the structure of the Multiple Class Fund or Master-Feeder Fund.

(2) If more than one class of a Multiple Class Fund is offered in the prospectus, provide the information required by paragraphs (a) and (b) for each of those classes.

(3) If a Multiple Class Fund offers in the prospectus shares that provide for conversions or exchanges from one class to another class, provide the information required by paragraphs (a) and (b) for both the shares offered and the class into which the shares may be converted or exchanged.

(4) If a Multiple Class Fund publicly offers any other classes of its shares in another prospectus, or if any publicly offered feeder fund that invests in the same Master Fund as the Fund is offered in another prospectus, include the following disclosure:

(i) That the Fund has other classes or that other funds invest in the same Master Fund (using the same names for classes and feeder funds as elsewhere in the prospectus);

(ii) That those classes or feeder funds may have different sales fees (loads) and other expenses, which may affect performance;

(iii) A telephone number investors may call to obtain more information concerning the other classes or feeder funds available to them through their sales representative; and

(iv) That investors may obtain information concerning those classes or feeder funds from (as applicable) their sales representative or any other person,

such as the principal underwriter, a broker-dealer or bank, which is offering or making available to them the shares offered in the prospectus.

Item 9. Financial Highlights Information

(a) Provide the following information for the Fund, or for the Fund and its subsidiaries, audited for at least the latest 5 years and consolidated as required in Regulation S–X (17 CFR 210).

Financial Highlights

The financial highlights table is intended to help you understand the Fund's financial performance for the past 10 years [or, if shorter, the period of the Fund's operations]. Certain information reflects financial results for a single Fund share. The total returns in the table represent the rate an investor would have earned [or lost] on an investment in the Fund (assuming reinvestment of all dividends and distributions). This information has been audited by _____, whose report, along with the Fund's financial statements, are included in [the SAI or annual report], which is available upon request.

Net Asset Value, Beginning of Period

Income From Investment Operations

Net Investment Income
Net Gains or Losses on Securities (both realized and unrealized)
Total From Investment Operations

Less Distributions

Dividends (from net investment income)
Distributions (from capital gains)
Returns of Capital
Total Distributions
Net Asset Value, End of Period

Total Return

Ratios/Supplemental Data

Net Assets, End of Period
Ratio of Expenses to Average Net Assets
Ratio of Net Income to Average Net Assets
Portfolio Turnover Rate
Average Commission Rate Paid

Instructions.

1. *General.*

(a) Present the information in comparative columnar form for each of the last 10 fiscal years of the Fund (or for such shorter period as the Fund has been in operation), but only for periods subsequent to the effective date of the Fund's registration statement. Also present the information for the period between the end of the latest fiscal year and the date of the latest balance sheet or statement of assets and liabilities. When the period for which the Fund provides financial highlights is less than a full fiscal year, the ratios in the table may be annualized. If applicable, disclose that the ratios are annualized in a note to the table.

(b) List per share amounts at least to the nearest cent. If the offering price is expressed in tenths of a cent or more, then state the amounts in the table in tenths of a cent. Present the information using a consistent number of decimal places.

(c) Include the narrative explanation before the financial information. A Fund may modify the explanation if the explanation contains comparable information to that shown.

2. *Per Share Operating Performance.*

(a) Derive net investment income data by adding (deducting) the increase (decrease) per share in undistributed net investment income for the period to (from) dividends from net investment income per share for the period. The increase (decrease) per share may be derived by comparing the per share figures obtained by dividing undistributed net investment income at the beginning and end of the period by the number of shares outstanding on those dates. Other methods of computing net investment income may be acceptable. Provide an explanation in a note to the table of any other method used to compute net investment income.

(b) The amount shown at the Net Gains or Losses on Securities caption is the balancing figure derived from the other amounts in the statement. The amount shown at this caption for a share outstanding throughout the year may not agree with the change in the aggregate gains and losses in the portfolio securities for the year because of the timing of sales and repurchases of Fund's shares in relation to fluctuating market values for the portfolio.

(c) For any distributions made from sources other than net investment income and capital gains, state the per share amounts separately at the Returns of Capital caption and note the nature of the distributions.

3. *Total Return.*

(a) Assume an initial investment made at the net asset value calculated on the last business day before the first day of each period shown.

(b) Do not reflect sales loads or account fees in the initial investment, but, if the Fund charges sales load or account fees, note that they are not reflected in total return.

(c) Reflect any sales load charged upon reinvestment of dividends or distributions.

(d) Assume a redemption at the price calculated on the last business day of each period shown.

(e) For a period less than a full fiscal year, state the total return for the period and disclose that total return is not annualized in a note to the table.

4. *Ratios/Supplemental Data.*

(a) Calculate ''average net assets'' based on the value of the net assets determined no less frequently than the end of each month.

(b) Calculate the Ratio of Expenses to Average Net Assets using the amount of expenses shown in the Fund's statement of operations for the relevant fiscal period, including increases resulting from complying with paragraph 2(g) of rule 6–07 of Regulation S–X and reductions resulting from complying with paragraphs 2(a) and (f) of rule 6–07 regarding fee waivers and reimbursements. If a change in the methodology for determining the ratio of expenses to average net assets results from applying paragraph 2(g) of rule 6–07, explain in a note that the ratio reflects fees paid with brokerage commissions and fees reduced in connection with specific agreements only for periods ending after September 1, 1995.

(c) A Fund that is a Money Market Fund may omit the Portfolio Turnover Rate.

(d) Calculate the Portfolio Turnover Rate as follows:

(i) Divide the lesser of amounts of purchases or sales of portfolio securities for the fiscal year by the monthly average of the value of the portfolio securities owned by the Fund during the fiscal year. Calculate the monthly average by totaling the values of portfolio securities as of the beginning and end of the first month of the fiscal year and as of the end of each of the succeeding 11 months and dividing the sum by 13.

(ii) Exclude from both the numerator and the denominator amounts relating to all securities, including options, whose maturities or expiration dates at the time of acquisition were one year or less. Include all long-term securities, including long-term U.S. Government securities. Purchases include any cash paid upon the conversion of one portfolio security into another and the cost of rights or warrants. Sales include net proceeds of the sale of rights and warrants and net proceeds of portfolio securities that have been called or for which payment has been made through redemption or maturity.

(iii) If the Fund acquired the assets of another investment company or of a personal holding company in exchange for its own shares during the fiscal year

in a purchase-of-assets transaction, exclude the value of securities acquired from purchases and securities sold from sales to realign the Fund's portfolio. Adjust the denominator of the portfolio turnover computation to reflect these excluded purchases and sales and disclose them in a footnote.

(iv) Include in purchases and sales any short sales that the Fund intends to maintain for more than one year and put and call options with expiration dates more than one year from the date of acquisition. Include proceeds from a short sale in the value of the portfolio securities sold during the period; include the cost of covering a short sale in the value of portfolio securities purchased during the period. Include premiums paid to purchase options in the value of portfolio securities purchased during the reporting period; include premiums received from the sale of options in the value of the portfolio securities sold during the period.

5. *Average Commission Rate Paid.*

(a) A Fund that invests not more than 10% of the value of its average net assets in equity securities on which commissions are charged on trades may omit Average Commission Rate Paid. Calculate average net assets by totaling the amounts invested at the beginning and end of the first quarter of the fiscal year and at the end of each succeeding quarter and dividing the sum by 5.

(b) Calculate the average commission rate paid by dividing the total dollar amount of commissions paid during the fiscal year by the total number of shares purchased and sold during the fiscal year for which commissions were charged. Carry the amount of the average commission rate paid to no fewer than four decimal places. Convert commissions paid in foreign currency into U.S. dollars using consistently either the prevailing exchange rate on the date of the transaction or average exchange rate over the period the transactions took place. Do not include markups, mark-downs, or spreads paid on shares traded on a principal basis unless they are disclosed on confirmations prepared in accordance with rule 10b–10 under the Securities Exchange Act (17 CFR 240.10b–10).

(b) A Fund may incorporate by reference the Financial Highlights Information from a report to shareholders under rule 30d–1 into the prospectus in response to this Item if the Fund delivers the shareholder report with the prospectus, or if the report has been previously delivered (*e.g.*, to a current shareholder), the Fund includes the statement required by Item 1(b)(3).

PART B INFORMATION REQUIRED IN A STATEMENT OF ADDITIONAL INFORMATION

Item 10. Cover Page and Table of Contents

(a) *Front Cover Page.* Include the following information on the outside front cover page of the SAI:

(1) The Fund's name and, if the Fund is a Series, also provide the Registrant's name.

(2) A statement or statements:

(i) That the SAI is not a prospectus;

(ii) That the SAI should be read in conjunction with the prospectus;

(iii) How the prospectus may be obtained; and

(iv) Whether and from where information is incorporated by reference into the SAI, as permitted by General Instruction D.

Instruction. Any information incorporated by reference into the SAI must be delivered with the SAI unless the information has been previously delivered in a shareholder report (*e.g.*, to a current shareholder), and the Fund states that the shareholder report is available, without charge, upon request. Provide a toll-free (or collect) telephone number to call to request the report.

(3) The date of the SAI and of the prospectus to which the SAI relates.

(b) *Table of Contents.* Include under appropriate captions (and subcaptions) a list of the contents of the SAI and, when useful, provide cross-references to related disclosure in the prospectus.

Item 11. Fund History

(a) Provide the date and form of organization of the Fund and the name of the state or other jurisdiction where the Fund is organized.

(b) If the Fund has engaged in a business other than that of an investment company during the past 5 years, state the nature of the other business and give the approximate date on which the Fund commenced business as an investment company. If the Fund's name was changed during that period, state its former name and the approximate date on which it was changed. Briefly describe the nature and results of any change in the Fund's business or name that occurred in connection with any bankruptcy, receivership, or similar proceeding, or any other material reorganization, readjustment or succession.

Item 12. Description of the Fund and Its Investments and Risks

(a) *Classification.* State that the Fund is an open-end, management investment company and indicate, if applicable, that the Fund is diversified.

(b) *Investment Strategies and Risks.* Describe any strategies, including a strategy to invest in a particular type of security, used by the Fund's investment adviser that are not principal strategies and the risks of those strategies.

(c) *Fund Policies.*

(1) Describe the Fund's policy with respect to each of the following:

(i) Issuing senior securities;

(ii) Borrowing money, including the purpose for which the proceeds will be used;

(iii) Underwriting securities of other issuers;

(iv) Concentrating investments in a particular industry or group of industries;

(v) Purchasing or selling real estate or commodities;

(vi) Making loans; and

(vii) Any other policy that the Fund deems fundamental or that may not be changed without shareholder approval, including, if applicable, the Fund's investment objective.

Instruction. If the Fund reserves freedom of action with respect to any practice specified in paragraph (c)(1), state the maximum percentage of assets to be devoted to the practice and disclose the risks of the practice.

(2) State whether shareholder approval is necessary to change any policy specified in paragraph (c)(1). If so, describe the vote required to obtain this approval.

(d) *Temporary Defensive Position.* Disclose, if applicable, the types of investments a Fund may make while assuming a temporary defensive position.

(e) *Portfolio Turnover.*

(1) If a Fund expects its portfolio turnover rate to be less than 100% for the coming year, disclose the anticipated rate of portfolio turnover for the coming year.

(2) Explain any significant variation in the Fund's portfolio turnover rates over the most recent two fiscal years or any anticipated variation in the portfolio turnover rate from that reported for the last fiscal year in response to Item 9.

Instruction. This paragraph does not apply to a Money Market Fund.

Item 13. Management of the Fund

(a) *Board of Directors.* Briefly describe the responsibilities of the board of directors with respect to the Fund's management.

Instruction. A Fund may respond to this paragraph by providing a general statement as to the responsibilities of the board of directors with respect to the Fund's management under the applicable laws where the Fund is organized.

(b) *Management Information.* Provide the information required by the following table for each director and officer of the Fund, and, if the Fund has an advisory board, for each member of the board. Explain in a footnote to the table any family relationship between persons listed.

(1) Name, Address, and Age	(2) Position(s) Held with Fund	(3) Principal Occupation(s) During Past 5 Years

Instructions.

1. For purposes of this paragraph, the term ''officer'' means the president, vice-president, secretary, treasurer, controller, and any other officers who perform policy-making functions for the Fund. The term ''family relationship'' means any relationship by blood, marriage, or adoption, not more remote than first cousin.

2. State the principal business of any corporation or other organization listed under column (3) unless the principal business is implicit in its name.

3. Identify members of any executive or investment committee, and provide a concise statement of the duties and functions of each committee.

4. Indicate with an asterisk the directors who are interested persons.

(c) For each individual listed in column (1) of the table required by paragraph (b), describe any positions held with affiliated persons or principal underwriters of the Fund.

Instruction. When an individual holds the same position(s) with two or more registered investment companies that are part of a ''Fund Complex'' as that term is defined in Item 22(a) of Schedule 14A under the Securities Exchange Act (17 CFR 240.14a-101), the Fund may, rather than listing each investment company, identify the Fund Complex and provide the number of positions held.

(d) *Compensation.* For all directors of the Fund and for all members of any advisory board who receive compensation from the Fund, and for each of the three highest paid executive officers or any affiliated person of the Fund who received aggregate compensation from the Fund for the most recently completed fiscal year exceeding $60,000 (''Compensated Persons''):

(1) Provide the information required by the following table:

COMPENSATION TABLE

(1) Name of Person, Position	(2) Aggregate Compensation From Fund	(3) Pension or Retirement Benefits Accrued As Part of Fund Expenses	(4) Estimated Annual Benefits Upon Retirement	(5) Total Compensation From Fund and Fund Complex Paid to Directors

Instructions.

1. For column (1), indicate, as necessary, the capacity in which the remuneration is received. For Compensated Persons that are directors of the Fund, compensation is amounts received for service as a director.

2. If the Fund has not completed its first full year since its organization, provide the information for the current fiscal year, estimating future payments that would be made under an existing agreement or understanding. Disclose in a footnote to the Compensation Table the period for which the information is given.

3. Include in column (2) amounts deferred at the election of the Compensated Person, whether under a plan established under section 401(k) of the Internal Revenue Code (I.R.C. 401(k)) or otherwise, for the fiscal year in which earned. Disclose in a footnote to the Compensation Table the total amount of deferred compensation (including interest) payable to or accrued for any Compensated Person.

4. Include in columns (3) and (4) all pension or retirement benefits proposed to be paid under any existing plan in the event of retirement at normal retirement date, directly or indirectly, by the Fund, any of its subsidiaries, or other investment companies in the Fund Complex. Omit column (4) when retirement benefits are not determinable.

5. For any defined benefit or actuarial plan under which benefits are determined primarily by final compensation (or average final compensation) and years of service, provide the information required in column (4) in a separate table showing estimated annual benefits payable upon retirement (including amounts attributable to any defined benefit supplementary or excess pension award plans) in specified compensation and years of service classifications. Also provide the estimated credited years of service for each Compensated Person.

6. Include in column (5) only aggregate compensation paid to a director for service on the board and all other boards of investment companies in a Fund Complex specifying the number of any other investment companies.

(2) Describe briefly the material provisions of any pension, retirement, or other plan or any arrangement, other than fee arrangements disclosed in paragraph (d)(1), under which the Compensated Persons are or may be compensated for services provided, including amounts paid, if any, to the Compensated Person under these arrangements during the most recently completed fiscal year. Specifically include the criteria used to determine amounts payable under the plan, the length of service or vesting period required by the plan, the retirement age or other event that gives rise to payment under the plan, and whether the payment of benefits is secured or funded by the Fund.

(e) *Sales Loads.* Disclose any arrangements that result in breakpoints in, or elimination of, sales loads for directors and other affiliated persons of the Fund. Identify each class of individuals and transactions to which the arrangements apply and state each different breakpoint as a percentage of both the offering price and the net amount invested of the Fund's shares. Explain, as applicable, the reasons for the difference in the price at which securities are offered generally to the public, and the prices at which securities are offered to directors and other affiliated persons of the Fund.

Item 14. Control Persons and Principal Holders of Securities

Provide the following information as of a specified date no more than 30 days prior to the date of filing the registration statement or an amendment.

(a) *Control Persons.* State the name and address of each person who controls the Fund and explain the effect of that control on the voting rights of other security holders. For each control person, state the percentage of the Fund's voting securities owned or any other basis of control. If the control person is a company, give the jurisdiction under the laws of which it

is organized. List all parents of the control person.

Instruction. For the purposes of this paragraph, ''control'' means (i) the beneficial ownership, either directly or through one or more controlled companies, of more than 25% of the voting securities of a company; (ii) the acknowledgement or assertion by either the controlled or controlling party of the existence of control; or (iii) an adjudication under section 2(a)(9), which has become final, that control exists.

(b) *Principal Holders.* State the name, address, and percentage of ownership of each person who owns of record or is known by the Fund to own of record or beneficially 5% or more of any class of the Fund's outstanding equity securities.

Instructions.

1. Calculate the percentages based on the amount of securities outstanding.

2. If securities are being registered under or in connection with a plan of acquisition, reorganization, readjustment or succession, indicate, as far as practicable, the ownership that would result from consummation of the plan based on present holdings and commitments.

3. Indicate whether the securities are owned of record, beneficially, or both. Show the respective percentage owned in each manner.

(c) *Management Ownership.* State the percentage of the Fund's equity securities owned by all officers, directors, and members of any advisory board of the Fund as a group. If the amount owned by directors and officers as a group is less than 1% of the class, provide a statement to that effect.

Item 15. Investment Advisory and Other Services

(a) *Investment Advisers.* Disclose the following information with respect to each investment adviser:

(1) The name of any person who controls the adviser, the basis of the person's control, and the general nature of the person's business. Also disclose, if material, the business history of any organization that controls the adviser.

(2) The name of any affiliated person of the Fund, who also is an affiliated person of the adviser and a list of all capacities in which the person is affiliated with the Fund and with the adviser.

Instruction. If an affiliated person of the Fund alone or together with others controls the adviser, state that fact. It is not necessary to provide the amount or percentage of the outstanding voting securities owned by the controlling person.

(3) The method of calculating the advisory fee payable by the Fund including:

(i) The total dollar amounts the Fund paid to the adviser under the investment advisory contract for the last three fiscal years;

(ii) If applicable, any credits that reduced the advisory fee for any of the last three fiscal years; and

(iii) Any expense limitation provision.

Instructions.

1. If the advisory fee payable by the Fund varies depending on the Fund's investment performance in relation to a standard, set forth the standard along with a fee schedule in tabular form. The Fund may include examples showing the fees the adviser would earn at various levels of performance as long as the examples include calculations showing the maximum and minimum fee percentages that could be earned under the contract.

2. State separately each type of credit or offset.

3. When a Fund is subject to more than one expense limitation provision, describe only the most restrictive provision.

4. For a Series or Multiple Class Fund, describe the methods of allocation and payment of advisory fees for each Series or class.

(b) *Principal Underwriter.* State the name and principal business address of any principal underwriter for the Fund. Disclose, if applicable, that an affiliated person of the Fund is an affiliated person of the principal underwriter and identify the affiliated person.

(c) *Services Provided by the Investment Adviser and Fund Expenses Paid by Third Parties.*

(1) Describe all services performed for or on behalf of the Fund supplied or paid for wholly or in substantial part by the investment adviser.

(2) Describe all fees, expenses, and costs of the Fund that are to be paid by persons other than the investment adviser or the Fund, and identify those persons.

(d) *Service Agreements.* Summarize the substantive provisions of any other management-related service contract that may be of interest to a purchaser of the Fund's securities, under which services are provided to the Fund, indicating the parties to the contract, and the total dollars paid and by whom for the past three years.

Instructions.

1. The term ''management-related service contract'' includes any contract with the Fund to keep, prepare, or file accounts, books, records, or other documents required under federal or state law, or to provide any similar services with respect to the daily administration of the Fund, but does not include the following:

(a) Any contract with the Fund to provide investment advice;

(b) Any agreement with the Fund to perform as custodian, transfer agent, or dividend-paying agent for the Fund; and

(c) Any contract with the Fund for outside legal or auditing services, or contract for personal employment entered into with the Fund in the ordinary course of business.

2. No information need be given in response to this paragraph with respect to the service of mailing proxies or periodic reports to the Fund's shareholders.

3. In summarizing the substantive provisions of any management-related service contract, include the following:

(a) The name of the person providing the service;

(b) The direct or indirect relationships, if any, of the person with the Fund, its investment adviser or its principal underwriter; and

(c) The nature of the services provided, and the basis of the compensation paid for the services for the last three fiscal years.

(e) *Other Investment Advice.* If any person (other than a director, officer, member of an advisory board, employee, or investment adviser of the Fund), through any understanding, whether formal or informal, regularly advises the Fund or the Fund's investment adviser with respect to the Fund's investing in, purchasing, or selling securities or other property, or has the authority to determine what securities or other property should be purchased or sold by the Fund, and receives direct or indirect remuneration, provide the following information:

(1) The person's name;

(2) A description of the nature of the arrangement, and the advice or information provided; and

(3) Any remuneration (including, for example, participation, directly or indirectly, in commissions or other compensation paid in connection with transactions in the Fund's portfolio securities) paid for the advice or information, and a statement as to how the remuneration was paid and by whom it was paid for the last three fiscal years.

Instruction. Do not include information for the following:

(a) Persons who advised the investment adviser or the Fund solely through uniform publications distributed to subscribers;

(b) Persons who provided the investment adviser or the Fund with only statistical and other factual

information, advice about economic factors and trends, or advice as to occasional transactions in specific securities, but without generally advising about the purchase or sale of securities by the Fund;

(c) A company that is excluded from the definition of ''investment adviser'' of an investment company under section 2(a)(20)(iii) (15 U.S.C. 80a–2(a)(20)(iii));

(d) Any person the character and amount of whose compensation for these services must be approved by a court; or

(e) Other persons as the Commission has by rule or order determined not to be an ''investment adviser'' of an investment company.

(f) *Dealer Reallowances.* Disclose any front-end sales load reallowed to dealers as a percentage of the offering price of the Fund's shares.

(g) *Rule 12b–1 Plans.* If the Fund has adopted a plan under rule 12b–1, describe the material aspects of the plan, and any agreements relating to the implementation of the plan, including:

(1) A list of the principal types of activities for which payments are or will be made, including the dollar amount and the manner in which amounts paid by the Fund under the plan during the last fiscal year were spent on:

(i) Advertising;

(ii) Printing and mailing of prospectuses to other than current shareholders;

(iii) Compensation to underwriters;

(iv) Compensation to broker-dealers;

(v) Compensation to sales personnel;

(vi) Interest, carrying, or other financing charges; and

(vii) Other (specify).

(2) The relationship between amounts paid to the distributor and the expenses it incurs (*e.g.*, whether the plan reimburses the distributor only for expenses incurred or compensates the distributor regardless of its expenses).

(3) The amount of any unreimbursed expenses incurred under the plan in a previous year and carried over to future years, in dollars and as a percentage of the Fund's net assets on the last day of the previous year.

(4) Whether the Fund participates in any joint distribution activities with another series or investment company. If so, disclose, if applicable, that fees paid under the Fund's rule 12b–1 plan may be used to finance the distribution of the shares of another series or investment company, and state the method of allocating distribution costs (*e.g.*, relative net asset size, number of shareholder accounts).

(5) Whether any of the following persons had a direct or indirect financial interest in the operation of the plan or related agreements:

(i) Any interested person of the Fund; or

(ii) Any director of the Fund who is not an interested person of the Fund.

(6) The anticipated benefits to the Fund that may result from the plan.

(h) *Other Service Providers.*

(1) Unless disclosed in response to paragraph (d), identify any person who provides significant administrative or business affairs management services for the Fund (*e.g.*, an ''Administrator''), describe the services provided, and the compensation paid for the services.

(2) State the name and principal business address of the Fund's transfer agent and the dividend paying agent.

(3) State the name and principal business address of the Fund's custodian and independent public accountant and describe generally the services performed by each. If the Fund's portfolio securities are held by a person other than a commercial bank, trust company, or depository registered with the Commission as custodian, state the nature of the business of that person or persons.

(4) If an affiliated person of the Fund, or an affiliated person of the affiliated person, acts as custodian, transfer agent, or dividend-paying agent for the Fund, describe the services the person performs and the basis for remuneration.

Item 16. Brokerage Allocation and Other Practices

(a) *Brokerage Transactions.* Describe how transactions in portfolio securities are effected, including a general statement about brokerage commissions and markups on principal transactions and the aggregate amount of any brokerage commissions paid by the Fund during the three most recent fiscal years. If, during either of the two years preceding the Fund's most recent fiscal year, the aggregate dollar amount of brokerage commissions paid by the Fund differed materially from the amount paid during the most recent fiscal year, state the reason(s) for the difference(s).

(b) *Commissions.*

(1) Identify, disclose the relationship, and state the aggregate dollar amount of brokerage commissions paid by the Fund during the three most recent fiscal years to any broker:

(i) That is an affiliated person of the Fund or an affiliated person of that person; or

(ii) An affiliated person of which is an affiliated person of the Fund, its investment adviser, or principal underwriter.

(2) For each broker identified in response to paragraph (b)(1), state:

(i) The percentage of the Fund's aggregate brokerage commissions paid to the broker during the most recent fiscal year; and

(ii) The percentage of the Fund's aggregate dollar amount of transactions involving the payment of commissions effected through the broker during the most recent fiscal year.

(3) State the reasons for any material difference in the percentage of brokerage commissions paid to, and the percentage of transactions effected through, a broker disclosed in response to paragraph (b)(1).

(c) *Brokerage Selection.* Describe how the Fund will select brokers to effect securities transactions for the Fund and how the Fund will evaluate the overall reasonableness of brokerage commissions paid, including the factors the Fund will consider in making these determinations.

Instructions.

1. If the Fund will consider the receipt of products or services other than brokerage or research services in selecting brokers, specify those products and services.

2. If the Fund will consider the receipt of research services in selecting brokers, identify the nature of those research services.

3. State whether persons acting on the Fund's behalf are authorized to pay a broker a higher brokerage commission than another broker might have charged for the same transaction in recognition of the value of (a) brokerage or (b) research services provided by the broker.

4. If applicable, explain that research services provided by brokers through whom the Fund effects securities transactions may be used by the Fund's investment adviser in servicing all of its accounts and that not all of these services may be used by the adviser in connection with the Fund. If other policies or practices are applicable to the Fund with respect to the allocation of research services provided by brokers, explain those policies and practices.

(d) *Directed Brokerage.* If, during the last fiscal year, the Fund or its investment adviser, through an agreement or understanding with a broker, or otherwise through an internal allocation procedure, directed the Fund's brokerage transactions to a broker because of research services provided, state the amount of the transactions and related commissions.

(e) *Regular Broker-Dealers.* If the Fund has acquired during its most recent fiscal year or during the period of

time since organization, whichever is shorter, securities of its regular brokers or dealers as defined in rule 10b-1 (17 CFR 270.10b-1) or of their parents, identify those brokers or dealers and state the value of the Fund's aggregate holdings of the securities of each issuer as of the close of the Fund's most recent fiscal year.

Instruction. The Fund need only disclose information about an issuer that derived more than 15% of its gross revenues from the business of a broker, a dealer, an underwriter, or an investment adviser during its most recent fiscal year.

Item 17. Capital Stock and Other Securities

(a) *Capital Stock.* For each class of capital stock of the Fund, provide:

(1) The title of each class; and

(2) A full discussion of the following provisions or characteristics of each class, if applicable:

(i) Dividend rights;

(ii) Voting rights (including whether the rights of shareholders can be modified by other than a majority vote);

(iii) Liquidation rights;

(iv) Preemptive rights;

(v) Conversion rights;

(vi) Redemption provisions;

(vii) Sinking fund provisions; and

(viii) Liability to further calls or to assessment by the Fund.

Instructions.

1. If any class described in response to this paragraph possesses cumulative voting rights, disclose the existence of those rights and explain the operation of cumulative voting.

2. If the rights evidenced by any class described in response to this paragraph are materially limited or qualified by the rights of any other class, explain those limitations or qualifications.

(b) *Other Securities.* Describe the rights of any authorized securities of the Fund other than capital stock. If the securities are subscription warrants or rights, state the title and amount of securities called for, and the period during which and the prices at which the warrants or rights are exercisable.

Item 18. Purchase, Redemption, and Pricing of Shares

(a) *Purchase of Shares.* Describe how the Fund's shares are offered to the public. Include any special purchase plans or methods not described in the prospectus or elsewhere in the SAI, including letters of intent, accumulation plans, withdrawal plans, exchange privileges, and services in connection with retirement plans.

(b) *Fund Reorganizations.* Disclose any arrangements that result in breakpoints in, or elimination of, sales loads in connection with the terms of a merger, acquisition, or exchange offer made under a plan of reorganization. Identify each class of individuals to which the arrangements apply and state each different sales load available as a percentage of both the offering price and the net amount invested.

(c) *Offering Price.* Describe the method followed or to be followed by the Fund in determining the total offering price at which its shares may be offered to the public and the method(s) used to value the Fund's assets.

Instructions.

1. Describe the valuation procedure the Fund uses in determining the net asset value and public offering price of its shares.

2. Explain how the excess of the offering price over the net amount invested is distributed among the Fund's principal underwriters or others and the basis for determining the total offering price.

3. Explain the reasons for any difference in the price at which securities are offered generally to the public, and the prices at which securities are offered for any class of transactions or to any class of individuals.

4. Unless provided as a continuation of the balance sheet in response to Item 22, include a specimen price-make-up sheet showing how the Fund calculates the total offering price per unit. Base the calculation on the value of the Fund's portfolio securities and other assets and its outstanding securities as of the date of the balance sheet filed by the Fund.

(d) *Redemption in Kind.* If the Fund has received an order of exemption from section 18(f) or has filed a notice of election under rule 18f-1 that has not been withdrawn, describe the nature, extent, and effect of the exemptive relief or notice unless the information has been disclosed in the prospectus.

Item 19. Taxation of the Fund

(a) If applicable, state that the Fund is qualified or intends to qualify under Subchapter M of the Internal Revenue Code.

(b) Disclose any special or unusual tax aspects of the Fund, such as taxation resulting from foreign investment or from status as a personal holding company, or any tax loss carry-forward to which the Fund may be entitled.

Item 20. Underwriters

(a) *Distribution of Securities.* For each principal underwriter distributing securities of the Fund, state:

(1) The nature of the obligation to distribute the Fund's securities;

(2) Whether the offering is continuous; and

(3) The aggregate dollar amount of underwriting commissions and the amount retained by the principal underwriter for each of the last three fiscal years.

(b) *Compensation.* Provide the information required by the following table with respect to all commissions and other compensation received by each principal underwriter, who is an affiliated person of the Fund or an affiliated person of that affiliated person, directly or indirectly, from the Fund during the Fund's most recent fiscal year:

(1) Name of Principal Underwriter	(2) Net Underwriting Discounts and Commissions	(3) Compensation on Redemptions and Repurchases	(4) Brokerage Commissions	(5) Other Compensation

Instruction. Disclose in a footnote to the table the type of services rendered in consideration for the compensation listed under column (5).

(c) *Other Payments.* With respect to any payments made by the Fund to an underwriter or dealer in the Fund's shares during the last fiscal year, disclose the name and address of the underwriter or dealer, the amount paid and basis for determining that amount, the circumstances surrounding the payments, and the consideration received by the Fund. Do not include information about:

(1) Payments made through deduction from the offering price at the time of sale of securities issued by the Fund;

(2) Payments representing the purchase price of portfolio securities acquired by the Fund;

(3) Commissions on any purchase or sale of portfolio securities by the Fund; or

(4) Payments for investment advisory services under an investment advisory contract.

Instructions.

1. Do not include in response to this paragraph information provided in response to paragraph (b) or with respect to service payments under Item 8(b). Do not include any payment for a service excluded by Instructions 1 and 2 to Item 15(d) or by Instruction 2 to Item 30.

2. If the payments were made under an arrangement or policy applicable to dealers generally, describe only the arrangement or policy.

Item 21. Calculation of Performance Data

(a) *Money Market Funds.* If a Money Market Fund advertises a yield quotation(s), disclose, as applicable, the yield quotation(s) calculated according to paragraphs (a)(1)–(4). Use the same calculations for a yield quotation(s) included in the prospectus.

(1) *Yield Quotation.* Based on the 7 days ended on the date of the most recent balance sheet included in the registration statement, calculate the Fund's yield by determining the net change, exclusive of capital changes, in the value of a hypothetical pre-existing account having a balance of one share at the beginning of the period, subtracting a hypothetical charge reflecting deductions from shareholder accounts, and dividing the difference by the value of the account at the beginning of the base period to obtain the base period return, and then multiplying the base period return by (365/7) with the resulting yield figure carried to at least the nearest hundredth of one percent.

(2) *Effective Yield Quotation.* Based on the 7 days ended on the date of the most recent balance sheet included in the registration statement, calculate the Fund's effective yield, carried to at least the nearest hundredth of one percent, by determining the net change, exclusive of capital changes, in the value of a hypothetical pre-existing account having a balance of one share at the beginning of the period, subtracting a hypothetical charge reflecting deductions from shareholder accounts, and dividing the difference by the value of the account at the beginning of the base period to obtain the base period return, and then compounding the base period return by adding 1, raising the sum to a power equal to 365 divided by 7, and subtracting 1 from the result, according to the following formula:

EFFECTIVE YIELD=[(BASE PERIOD RETURN+1)$^{365/7}$]−1.

(3) *Tax Equivalent Current Yield Quotation.* Calculate the Fund's tax equivalent current yield by dividing that portion of the Fund's yield (as calculated under paragraph (a)(1)) that is tax-exempt by 1 minus a stated income tax rate and adding the quotient to that portion, if any, of the Fund's yield that is not tax-exempt.

(4) *Tax Equivalent Effective Yield Quotation.* Calculate the Fund's tax equivalent effective yield by dividing that portion of the Fund's effective yield (as calculated under paragraph (a)(2)) that is tax-exempt by 1 minus a stated income tax rate and adding the quotient to that portion, if any, of the Fund's effective yield that is not tax-exempt.

(5) State:

(i) The length of and the last day in the base period used in calculating the quotation(s);

(ii) A description of the method(s) by which the yield quotation(s) is calculated; and

(iii) The income tax rate used in the calculation, if applicable.

Instructions.

1. When calculating yield or effective yield quotations, the calculation of net change in account value must include:

(a) The value of additional shares purchased with dividends from the original share and dividends declared on both the original shares and additional shares; and

(b) All fees, other than nonrecurring account or sales charges, that are charged to all shareholder accounts in proportion to the length of the base period. For any account fees that vary with the size of the account, assume an account size equal to the Fund's mean (or median) account size.

2. Exclude realized gains and losses from the sale of securities and unrealized appreciation and depreciation from the calculation of yield and effective yield.

3. Disclose the amount or specific rate of any nonrecurring account or sales charges not included in the calculation of the yield.

4. If the Fund holds itself out as distributing income that is exempt from federal, state, or local income taxation, in calculating yield and effective yield (but not tax equivalent yield or tax equivalent effective yield), reduce the yield quoted by the effect of any income taxes on the shareholder receiving dividends, using the maximum rate for individual income taxation. For example, if the Fund holds itself out as distributing income exempt from federal taxation and the income taxes of State A, but invests in some securities of State B, it must reduce its yield by the effect of state income taxes that must be paid by the residents of State A on that portion of the income attributable to the securities of State B.

(b) *Other Funds.* If the Fund advertises performance data, disclose, as applicable, the performance information calculated according to paragraphs (b)(1)–(4). Use the same calculations for performance information included in the prospectus.

(1) *Average Annual Total Return Quotation.* For the 1, 5, and 10 year periods ended on the date of the most recent balance sheet included in the registration statement (or for the periods the Fund has been in operation), calculate the Fund's average annual total return by finding the average annual compounded rates of return over the 1, 5, and 10 year periods (or for the periods of the Fund's operations) that would equate the initial amount invested to the ending redeemable value, according to the following formula:

$P(1+T)^n=ERV$

Where:

P=a hypothetical initial payment of $1,000.

T=average annual total return.

n=number of years.

ERV=ending redeemable value of a hypothetical $1,000 payment made at the beginning of the 1, 5, or 10 year periods at the end of the 1, 5, or 10 year periods (or fractional portion).

Instructions.

1. Assume the maximum sales load (or other charges deducted from payments) is deducted from the initial $1,000 payment. If shareholders are charged a deferred sales load, assume the maximum deferred sales load is deducted at the times, in the amounts, and under the terms disclosed in the prospectus.

2. Assume all dividends and distributions by the Fund are reinvested at the price stated in the prospectus (including any sales load charged upon reinvestment of dividends) on the reinvestment dates during the period.

3. Include all recurring fees that are charged to all shareholder accounts. For any account fees that vary with the size of the account, assume an account size equal to the Fund's mean (or median) account size. Reflect, as appropriate, any recurring fees charged to shareholder accounts that are paid other than by redemption of the Fund's shares.

4. Determine the ending redeemable value by assuming a complete redemption at the end of the 1, 5, or 10 year periods and the deduction of all nonrecurring charges deducted at the end of each period.

5. State the total return quotation to the nearest hundredth of one percent.

6. Total return information in the prospectus need only be current to the end of the Fund's most recent fiscal year.

(2) *Yield Quotation.* Based on a 30-day (or one month) period ended on the date of the most recent balance sheet included in the registration statement, calculate the Fund's yield by dividing the net investment income per share earned during the period by the maximum offering price per share on the last day of the period, according to the following formula:

$$\text{YIELD} = 2\left[\left(\frac{a-b}{cd}+1\right)^{6}-1\right]$$

Where:

a=dividends and interest earned during the period.

b=expenses accrued for the period (net of reimbursements).

c=the average daily number of shares outstanding during the period that were entitled to receive dividends.

d=the maximum offering price per share on the last day of the period.

Instructions.

1. To calculate interest earned on debt obligations for purposes of ''a'' above:

(a) Calculate the yield to maturity of each obligation held by the Fund based on the market value of the obligation (including actual accrued interest) at the close of business on the last business day of each month or, with respect to obligations purchased during the month, the purchase price (plus actual accrued interest). The maturity of an obligation with a call provision(s) is the next call date on which the obligation reasonably may be expected to be called, or if none, the maturity date.

(b) Divide the yield to maturity by 360 and multiply the quotient by the market value of the obligation (including actual accrued interest) to determine the interest income on the obligation for each day of the subsequent month that the obligation is in the portfolio. Assume that each month has 30 days.

(c) Total the interest earned on all debt obligations and all dividends accrued on all equity securities during the 30-day (or one month) period. Although the period for calculating interest earned is based on calendar months, a 30-day yield may be calculated by aggregating the daily interest on the portfolio from portions of 2 months. In addition a Fund may recalculate daily interest income on the portfolio more than once a month.

(d) For a tax-exempt obligation issued without original issue discount and having a current market discount, use the coupon rate of interest in lieu of the yield to maturity. For a tax-exempt obligation with original issue discount in which the discount is based on the current market value and exceeds the then-remaining portion of original issue discount (market discount), base the yield to maturity on the imputed rate of the original issue discount calculation. For a tax-exempt obligation with original issue discount, where the discount based on the current market value is less than the then-remaining portion of original issue discount (market premium), base the yield to maturity on the market value.

2. For discount and premium on mortgage or other receivables-backed obligations that are expected to be subject to monthly payments of principal and interest (''paydowns''):

(a) Account for gain or loss attributable to actual monthly paydowns as an increase or decrease to interest income during the period; and

(b) The Fund may elect:

(i) To amortize the discount and premium on the remaining securities, based on the cost of the securities, to the weighted average maturity date, if the information is available, or to the remaining term of the securities, if the weighted average maturity date is not available; or

(ii) Not to amortize the discount or premium on the remaining securities.

3. Solely for the purpose of calculating yield, recognize dividend income by accruing 1/360 of the stated dividend rate of the security each day that the security is in the portfolio.

4. Do not use equalization accounting in calculating yield.

5. Include expenses accrued under a plan adopted under rule 12b-1 in the expenses accrued for the period. Reimbursement accrued under the plan may reduce the accrued expenses, but only to the extent the reimbursement does not exceed expenses accrued for the period.

6. Include in the expenses accrued for the period all recurring fees that are charged to all shareholder accounts in proportion to the length of the base period. For any account fees that vary with the size of the account, assume an account size equal to the Fund's mean (or median) account size.

7. If a broker-dealer or an affiliate of the broker-dealer (as defined in rule 1–02(b) of Regulation S–X (17 CFR 210.1–02(b)) has, in connection with directing the Fund's brokerage transactions to the broker-dealer, provided, agreed to provide, paid for, or agreed to pay for, in whole or in part, services provided to the Fund (other than brokerage and research services as those terms are used in section 28(e) of the Securities Exchange Act (15 U.S.C. 78bb(e)), add to expenses accrued for the period an estimate of additional amounts that would have been accrued for the period if the Fund had paid for the services directly in an arm's length transaction.

8. Undeclared earned income, calculated in accordance with generally accepted accounting principles, may be subtracted from the maximum offering price. Undeclared earned income is the net investment income that, at the end of the base period, has not been declared as a dividend, but is reasonably expected to be and is declared as a dividend shortly thereafter.

9. Disclose the amount or specific rate of any nonrecurring account or sales charges.

10. If a Fund imposes, in connection with sales of its shares, a deferred sales load payable in installments, the ''maximum public offering price'' includes the aggregate amount of the installments (''installment load amount'').

(3) *Tax Equivalent Yield Quotation.* Based on a 30-day (or one month) period ended on the date of the most recent balance sheet included in the registration statement, calculate the Fund's tax equivalent yield by dividing that portion of the Fund's yield (as calculated under paragraph (b)(2)) that is tax-exempt by 1 minus a stated income tax rate and adding the quotient to that portion, if any, of the Fund's yield that is not tax-exempt.

(4) *Non-Standardized Performance Quotation.* A Fund may calculate performance using any other historical measure of performance (not subject to any prescribed method of computation) if the measurement reflects all elements of return.

(5) State:

(i) The length of and the last day in the base period used in calculating the quotation(s);

(ii) A description of the method(s) by which the performance data is calculated; and

(iii) The income tax rate used in the calculation, if applicable.

Item 22. Financial Statements

(a) *Registration Statement.*

(1) Include, in a separate section following the responses to the preceding Items, the financial statements and schedules required by Regulation S–X. The specimen price-make-up sheet required by Instruction 4 to Item 18(c)) may be provided as a continuation of the balance sheet specified by Regulation S–X.

Instructions.

1. The statements of any subsidiary that is not a majority-owned subsidiary required by Regulation S–X may be omitted from Part B and included in Part C.

2. In addition to the requirements of rule 3–18 of Regulation S–X (17 CFR 210.3–18), any Fund registered under the Investment Company Act that has not previously had an effective registration statement under the Securities Act must include in its initial registration statement under the Securities Act any additional financial statements and condensed financial information (which need not be audited) necessary to make the financial statements and condensed financial information included in the registration statement current as of a date within 90 days prior to the date of filing.

(2) File a post-effective amendment containing financial statements, which do not have to be audited, within 4 to 6 months of the effective date of the Fund's registration statement or the date the Fund commences operations (*i.e.*, begins selling shares to the public or investing assets in accordance with its investment objectives).

Instruction. A Fund may file the post-effective amendment within 8 months of the effective date of the Fund's registration statement if the post-effective amendment is filed within 30 days of the date of the latest balance sheet included in the Fund's annual or semi-annual report to shareholders.

(b) *Annual Report.* Every annual report to shareholders required under rule 30d–1 must contain the following:

(1) The audited financial statements required, and for the periods specified, by Regulation S–X.

(2) The condensed financial information required by Item 9(a), for the 5 most recent fiscal years, with at least the most recent fiscal year audited.

(3) Unless shown elsewhere in the report as part of the financial statements required by paragraph (b)(1), the aggregate remuneration paid by the Fund during the period covered by the report to:

(i) All directors and all members of any advisory board for regular compensation;

(ii) Each director and each member of an advisory board for special compensation;

(iii) All officers; and

(iv) Each person of whom any officer or director of the Fund is an affiliated person.

(4) The information concerning changes in and disagreements with accountants and on accounting and financial disclosure required by Item 304 of Regulation S–K (17 CFR 229.304).

(c) *Semi-Annual Report.* Every semi-annual report to shareholders required by rule 30d–1 must contain the following information (which need not be audited):

(1) The financial statements required by Regulation S–X for the period commencing either with:

(i) The beginning of the Fund's fiscal year (or date of organization, if newly organized); or

(ii) A date not later than the date after the close of the period included in the last report under rule 30d–1 and the most recent preceding fiscal year.

(2) The condensed financial information required by Item 9(a), for the period of the report as specified by paragraph (c)(1), and the most recent preceding fiscal year.

(3) Unless shown elsewhere in the report as part of the financial statements required by paragraph (c)(1), the aggregate remuneration paid by the Fund during the period covered by the report to the persons specified under paragraph (b)(3).

(4) The information concerning changes in and disagreements with accountants and on accounting and financial disclosure required by Item 304 of Regulation S–K.

Part C Other Information

Item 23. Exhibits

Subject to General Instruction H regarding incorporation by reference and rule 483 under the Securities Act (17 CFR 230.483), file the exhibits listed below as part of the registration statement. Letter or number the exhibits in the sequence indicated and file copies rather than originals, unless otherwise required by rule 483. Reflect any exhibit incorporated by reference in the list below and identify the previously filed document containing the incorporated material.

(a) *Articles of Incorporation.* The Fund's current articles of incorporation, charter, declaration of trust or corresponding instruments and any related amendment.

(b) *By-laws.* The Fund's current by-laws or corresponding instruments and any related amendment.

(c) *Instruments Defining Rights of Security Holders.* Instruments defining the rights of holders of the securities being registered, including the relevant portion of the Fund's articles of incorporation or by-laws.

(d) *Investment Advisory Contracts.* Investment advisory contracts relating to the management of the Fund's assets.

(e) *Underwriting Contracts.* Underwriting or distribution contracts between the Fund and a principal underwriter, and agreements between principal underwriters and dealers.

(f) *Bonus or Profit Sharing Contracts.* Bonus, profit sharing, pension, or similar contracts or arrangements in whole or in part for the benefit of the Fund's directors or officers in their official capacity. Describe in detail any plan not included in a formal document.

(g) *Custodian Agreements.* Custodian agreements and depository contracts under section 17(f) (15 U.S.C. 80a–17(f)) concerning the Fund's securities and similar investments, including the schedule of remuneration.

(h) *Other Material Contracts.* Other material contracts not made in the ordinary course of business to be performed in whole or in part on or after the filing date of the registration statement.

(i) *Legal Opinion.* An opinion and consent of counsel regarding the legality of the securities being registered, stating whether the securities will, when sold, be legally issued, fully paid, and nonassessable.

(j) *Other Opinions.* Any other opinions, appraisals, or rulings, and related consents relied on in preparing the registration statement and required by section 7 of the Securities Act (15 U.S.C. 77g).

(k) *Omitted Financial Statements.* Financial statements omitted from Item 22.

(l) *Initial Capital Agreements.* Any agreements or understandings made in consideration for providing the initial capital between or among the Fund, the underwriter, adviser, promoter or initial shareholders and written assurances from promoters or initial shareholders that purchases were made for investment purposes and not with the intention of redeeming or reselling.

(m) *Rule 12b–1 Plan.* Any plan entered into by the Fund under rule 12b–1 and any agreements with any person relating to the plan's implementation.

(n) *Financial Data Schedule.* A Financial Data Schedule meeting the requirements of rule 483 under the Securities Act.

(o) *Rule 18f–3 Plan.* Any plan entered into by the Fund under rule 18f–3, any agreement with any person relating to the plan's implementation, any amendment to the plan or an agreement, and the relevant minutes from a meeting of the Fund's directors describing any action taken to revoke the plan.

Item 24. Persons Controlled by or Under Common Control with the Fund

Provide a list or diagram of all persons directly or indirectly controlled by or under common control with the

Fund. For any person controlled by another person, disclose the percentage of voting securities owned by the immediately controlling person or other basis of that person's control. For each company, also provide the state or other sovereign power under the laws of which the company is organized.

Instructions.

1. Include the Fund in the list or diagram and show the relationship of each company to the Fund and to the other companies named, using cross-references if a company is controlled through direct ownership of its securities by two or more persons.

2. Indicate with appropriate symbols subsidiaries that file separate financial statements, subsidiaries included in consolidated financial statements, or unconsolidated subsidiaries included in group financial statements. Indicate for other subsidiaries why financial statements are not filed.

Item 25. Number of Holders of Securities

State in a tabular form similar to the one below, as of a specified date within 90 days prior to filing, the number of record holders of each class of the Fund's securities.

(1) Title of class	(2) Number of record holders

Item 26. Indemnification

State the general effect of any contract, arrangements or statute under which any director, officer, underwriter or affiliated person of the Fund is insured or indemnified against any liability incurred in their official capacity, other than insurance provided by any director, officer, affiliated person, or underwriter for their own protection.

Item 27. Business and Other Connections of the Investment Adviser

Describe any other business, profession, vocation or employment of a substantial nature that each investment adviser, and each director, officer or partner of the adviser, is or has been engaged within the last two fiscal years for his or her own account or in the capacity of director, officer, employee, partner, or trustee.

Instructions.

1. Disclose the name and principal business address of any company for which a person listed above serves in the capacity of director, officer, employee, partner, or trustee, and the nature of the relationship.

2. The names of investment advisory clients need not be given in answering this Item.

Item 28. Principal Underwriters

(a) State the name of each investment company (other than the Fund) for which each principal underwriter currently distributing the Fund's securities also acts as a principal underwriter, depositor, or investment adviser.

(b) Provide the information required by the following table for each director, officer, or partner of each principal underwriter named in the response to Item 20:

(1) Name and principal business address	(2) Positions and offices with underwriter	(3) Positions and offices with fund

(c) Provide the information required by the following table for all commissions and other compensation received, directly or indirectly, from the Fund during the last fiscal year by each principal underwriter who is *not* an affiliated person of the Fund or any affiliated person of an affiliated person:

(1) Name of principal underwriter	(2) Net underwriting discounts and commissions	(3) Compensation on redemption and repurchases	(4) Brokerage commissions	(5) Other compensation

Instructions.

1. Disclose the type of services rendered in consideration for the compensation listed under column (5).

2. Instruction 1 to Item 20(c) also applies to this Item.

Item 29. Location of Accounts and Records

State the name and address of each person maintaining physical possession of each account, book, or other document required to be maintained by section 31(a) (15 U.S.C. 80a–30(a)) and the rules thereunder.

Item 30. Management Services

Provide a summary of the substantive provisions of any management-related service contract not discussed in Part A or B, disclosing the parties to the contract and the total amount paid and by whom for the last three fiscal years.

Instructions.

1. The instructions to Item 15 also apply to this Item.

2. Exclude information about any service provided for payments totalling less than $5,000 during each of the last three fiscal years.

Item 31. Undertakings

In initial registration statements filed under the Securities Act, provide an undertaking to file an amendment to the registration statement with certified financial statements showing the initial capital received before accepting subscriptions from more than 25 persons if the Fund intends to raise its initial capital under section 14(a)(3) (15 U.S.C. 80a–14(a)(3)).

SIGNATURES

Pursuant to the requirements of (the Securities Act and) the Investment Company Act, the Fund (certifies that it meets all of the requirement for effectiveness of this registration statement under rule 485(b) under the Securities Act and) has duly caused this registration statement to be signed on its behalf by the undersigned, duly authorized, in the City of _____, and State of _____ on the day of _____, _____ (Year).

_____

Fund

By _____

(Signature and Title)

Pursuant to the requirements of the Securities Act, this registration statement has been signed below by the following persons in the capacities and on the date indicated.

_____

(Signature)

_____

(Title)

_____

(Date)

By the Commission

Dated: February 27, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–5368 Filed 3–7–97; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 230

[Release Nos. 33–7399; IC–22529; File No. S7–18–96]

RIN 3235–AH03

Proposed New Disclosure Option for Open-End Management Investment Companies

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission is proposing a new rule to permit open-end management investment companies to provide investors with a ''fund profile.'' The profile would present a summary of key information about a fund, including the fund's investment strategies, risks, performance, and fees, in a concise, standardized format. A fund that provides a profile would be able to offer investors a choice of the amount of information they wish to consider before making an investment decision; investors would have the option of purchasing the fund's shares based on the information in the profile or requesting and reviewing the fund's prospectus (and other information). An investor deciding to purchase fund shares based on the information in a profile would receive the fund's prospectus with the confirmation of purchase.

DATES: Comments must be received on or before June 9, 1997.

ADDRESSES: Submit comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–6009. Comments can be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–18–96; include this file number on the subject line if E-mail is used. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street, NW., Washington, DC 20549–6009. Electronically-submitted comment letters will be posted on the Commission's Internet Web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: David U. Thomas, Senior Counsel, Markian M.W. Melnyk, Senior Counsel, Kathleen K. Clarke, Special Counsel, or Elizabeth R. Krentzman, Assistant Director, (202) 942–0721, Office of Disclosure and Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, 450 5th Street, NW., Mail Stop 10–2, Washington, DC 20549–6009.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission (the ''Commission'') today is proposing for comment rule 498 (17 CFR 230.498) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) (''Securities Act'') and the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (''Investment Company Act''). The new rule would permit an open-end management investment company that registers on Form N–1A (17 CFR 274.11A) (a ''fund'') to provide at its option a fund profile (''profile'') to investors that contains a summary of key information about a fund. The Commission also is proposing amendments to rule 497 under the Securities Act (17 CFR 230.497) that would require a fund to file a profile with the Commission at least 30 days prior to its first use. In a companion release, the Commission is proposing revisions to the prospectus disclosure requirements in Form N–1A, the registration statement used by funds. These amendments seek to minimize prospectus disclosure about technical, legal, and operational matters that generally are common to all funds and to focus prospectus disclosure on essential information about a particular fund that would assist an investor in deciding whether to invest in that fund.[1] In another companion release, the Commission is proposing new rule 35d–1 under the Investment Company Act, which would, among other things, require a fund with a name suggesting that it focuses on a particular type of investment (*e.g.*, an investment company that calls itself the ABC Stock Fund, the XYZ Bond Fund, or the QRS U.S. Government Fund) to invest at least 80% of its assets in the type of investment suggested by its name.[2]

TABLE OF CONTENTS

I. Executive Summary and Introduction

Over the last decade, the fund industry has grown tremendously. With over 6,000 funds available and over 130 million shareholder accounts, fund assets exceed the deposits of commercial banks.[3] As more Americans turn to funds for professional management of current and retirement savings, funds have introduced new investment options and shareholder services to meet the needs of investors. While benefitting from these developments, investors also face an increasingly difficult task in choosing suitable fund investments. The Commission, fund investors, and others have recognized the need to improve fund disclosure to help investors evaluate and compare funds.[4] In the Commission's view, the growth of the fund industry and the diversity of fund investors warrant a new approach to fund disclosure that would offer more choices in the format and amount of information available about fund investments.

The Commission's commitment to improve the information provided in fund disclosure documents is long-standing, and the Commission has taken a number of steps to meet this goal.[5]

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[1] Investment Company Act Release No. 22528 (Feb. 27, 1997) (''Form N–1A Release'').

[2] Investment Company Act Release No. 22530 (Feb. 27, 1997) (''Fund Names Release''). Proposed rule 35d–1 would apply to all registered investment companies, including funds, closed-end investment companies, and unit investment trusts.

[3] *See* Investment Company Institute (''ICI''), *Trends in Mutual Fund Investing: November 1996* at 3 (Dec. 1996) (ICI News No. 96–107) (''ICI Trends'') and ICI, *Memorandum on Supplementary Data* at 22 (Jan. 13, 1997) (as of November 1996, there were 6,243 funds and 148.5 million shareholder accounts); *compare* ICI Trends at 1 (fund net assets exceeded $3.5 trillion as of November 1996) *with* 82 Fed. Res. Bull. 12, table 1.21, at A13 (1996) (commercial bank deposits were approximately $2.5 trillion as of Sept. 1996).

[4] *See, e.g.*, ''From Security to Self-Reliance: American Investors in the 1990s,'' Remarks by Arthur Levitt, Chairman, SEC, before the ICI's General Membership Meeting, Wash., D.C. (May 22, 1996); Remarks by Steven M.H. Wallman, Commissioner, SEC, before the ICI's 1995 Investment Company Directors Conference and New Directors Workshop, Wash., D.C. (Sept. 22, 1995); ''Toward Better Disclosure,'' Remarks by Isaac C. Hunt, Jr., Commissioner, SEC, before the American Society of Corporate Secretaries, Seattle, Wash. (June 26, 1996). *See also* McTague, *Simply Beautiful: Shorn of Legalese, Even Prospectuses Make Sense*, Barron's, Oct. 7, 1996, at F10 (concerning the recent efforts of the John Hancock funds and other fund groups to simplify their prospectuses).

[5] *See* Investment Company Act Release No. 20974 (Mar. 29, 1995) (60 FR 17172) (requesting comment on ways to improve risk disclosure and comparability of fund risk levels) (''Risk Concept Release''); Investment Company Act Release No. 21216 (July 19, 1995) (60 FR 38454) (proposing

Continued

Today, the Commission is proposing new rule 498, which would permit a fund to provide investors with a profile. The profile would include a summary of key information about a fund, including a fund's investment objectives, strategies, risks, performance, fees, investment adviser and portfolio manager, purchase and redemption procedures, tax implications, and the services available to the fund's investors. The profile is designed to permit investors at their option to purchase a fund's shares based on the information in the profile or to request and review the fund's prospectus (and other information about the fund) before making an investment decision. Investors deciding to purchase fund shares based on a profile would receive the fund's prospectus with their purchase confirmation.

In connection with the profile initiative, the Commission also is proposing, in the first of two companion releases, changes to prospectus disclosure requirements (''Form N–1A Release''). This proposal seeks to focus prospectus disclosure on essential information about a particular fund that would assist an investor in deciding whether to invest in that fund.[6] In the other companion release, the Commission is proposing a new rule that would address investment company names. This rule would require funds and other registered investment companies with names suggesting a particular investment emphasis to invest at least 80% of their assets in the type of investment suggested by their names.[7] Taken together, the initiatives proposed today are intended to allow funds flexibility to respond to the diverse information needs of investors, improve and streamline prospectus disclosure, and address fund names that are likely to mislead investors about a fund's investments and risks.

In a related initiative, the Commission recently proposed rule amendments to require the use of plain English principles in drafting prospectuses and to provide other guidance on improving the readability of prospectuses.[8] The Commission intends that the plain English initiatives serve as the standard for all disclosure documents, and the plain English proposals are an important counterpart of the proposed fund disclosure initiatives. If adopted, the plain English requirements would apply to fund prospectuses and the profile.

As part of a broad review of fund disclosure requirements, the Commission conducted a pilot program that permits funds to use profiles (''pilot profiles'') with their prospectuses.[9] The Investment Company Institute (''ICI'') and several large fund groups participated in the pilot program. The pilot profiles, like the profile proposed today, provide a summary of key information about a fund. The purpose of the pilot program was to assess whether investors found the pilot profiles helpful in making investment decisions. Focus groups conducted on the Commission's behalf (''Focus Groups'') responded very positively to the profile concept, indicating that a profile would assist them in making investment decisions. Fund investors participating in a survey sponsored by the ICI strongly supported the pilot profiles.[10] In addition, many commenters, including individual investors, have endorsed the profile's goal of providing standardized, summary information about a fund.[11]

Proposed rule 498 would implement the pilot program and give investors a new option of purchasing fund shares based on a profile, which would be a summary disclosure document. Each investor using the profile to make an investment decision would receive the full prospectus with the purchase confirmation. Since a fund's prospectus and other information about the fund would be available upon request, the profile would not reduce the information available to investors (or securities professionals). The profile also would not modify the protections afforded investors under the federal securities laws for misleading statements in fund disclosure documents. As an additional safeguard against misleading statements, rule 498 would require a fund to file the profile with the Commission before its first use, which would allow the Commission to monitor compliance with the profile disclosure requirements.

The profile would meet the Commission's goal of improving fund disclosure by providing:

• *A new disclosure choice for investors:* Focus Group participants and information from other sources indicate that different investors prefer different amounts of information before making an investment decision.[12] The profile would allow investors to choose the amount and format of information they want before making an investment decision. An investor comfortable with the level of information contained in a profile could purchase fund shares based on that information (and receive the fund's prospectus with the purchase confirmation). An investor who prefers more information before investing in a fund could use the profile to request the fund's prospectus and other information about the fund.

As a short, summary document, the profile could be a more efficient and less costly means of providing information to investors. A fund would have the flexibility to use diverse methods to distribute a profile (*e.g.*, by direct mail or by electronic media). To respond to investor interest, a fund could make the profile available and incur lower printing and mailing costs than it pays when sending a prospectus to every investor who is selecting among a number of similar or different types of funds. Investors, for example, could use the profile to narrow the number of funds being considered for investment and request prospectuses only for those funds about which the investor would

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amendments designed to make money market fund prospectuses simpler and more informative); Investment Company Act Release No. 19382 (Apr. 6, 1993) (58 FR 19050) (simplifying financial highlights information and requiring management's discussion of fund performance); Investment Company Act Release No. 16245 (Feb. 2, 1988) (53 FR 3868) (''Fund Performance Release'') (adopting a uniform formula for calculating fund performance); Investment Company Act Release No. 16244 (Feb. 1, 1988) (53 FR 3182) (adopting a uniform fee table in fund prospectuses). *See also* SEC, Report of the Advisory Committee on the Capital Formation and Regulatory Processes (July 24, 1996); SEC, Report of the Task Force on Disclosure Simplification (1996) (recommending specific improvements in the disclosure provided by corporate issuers).

[6] Form N–1A Release, *supra* note 1.

[7] Fund Names Release, *supra* note 2.

[8] Securities Act Release No. 7380 (Jan. 14, 1997) (62 FR 3152) (''Plain English Release''). In conjunction with these proposals, the Commission's Office of Investor Assistance has issued a draft of *A Plain English Handbook: How to Create Clear SEC Disclosure Documents* to explain the plain English principles of the proposed amendments and other techniques for preparing clear disclosure documents. *See also* ''Plain English: A Work in Progress,'' Remarks by Isaac C. Hunt, Commissioner, SEC, before the First Annual Institute on Mergers and Acquisition: Corporate, Tax, Securities, and Related Aspects, Key Biscayne, Fla. (Feb. 6, 1997).

[9] *See* Investment Company Institute (pub. avail. July 31, 1995) (''1995 Profile Letter''). The Division of Investment Management has permitted the pilot program, with some modifications, to continue for another year. *See* Investment Company Institute (pub. avail. July 29, 1996) (''1996 Profile Letter'').

[10] Letter from Paul Schott Stevens, Senior Vice President and General Counsel, ICI, to Barry P. Barbash, Director, Division of Investment Management, SEC, at 5–6 (May 20, 1996) (''ICI Survey Letter'') (enclosing Investment Company Institute, The Profile Prospectus: An Assessment by Mutual Fund Shareholders (1996) (survey of over 1,000 fund investors)).

[11] A number of individual investors have written to the Commission expressing strong support for the profile. *See also Profile Prospectuses: An Idea Whose Time Has Come*, Mutual Funds Magazine, Aug. 1996, at 11.

[12] *See, e.g.*, ICI Survey Letter, *supra* note 10, at 4–6.

like additional information before making a final investment decision.[13]

• *Standardized fund summaries:* Investors and others have expressed a strong preference for summary information about a fund in a standardized format.[14] The profile would meet this goal by requiring concise disclosure of 9 items of key information in a specific order and a question-and-answer format. These items would include a risk/return summary (also proposed to be required at the beginning of all fund prospectuses), which would summarize the fund's investment objectives, strategies, risks, performance, and fees.

Disclosure about a fund's risks would include a concise narrative description of the fund's overall risks and a bar chart that would illustrate graphically the fund's past risks by showing changes in the fund's returns from year to year. A table accompanying the bar chart would compare the average annual returns of the fund to those of a broad-based securities market index so that investors could evaluate the fund's performance and risks relative to the market.

Requiring profiles to present information in a standardized format should help investors identify key information about a fund and make comparisons among different funds. Rule 498 also would allow a fund to adapt the profile for use by investors in participant-directed defined contribution plans, who could use the summary information to evaluate and compare the investment alternatives offered by a plan.[15]

II. Discussion

A. General

The proposed requirements for the profile would be based on the current no-action letter of the Commission's Division of Investment Management (''Division'') permitting the pilot profiles (''1996 Profile Letter'').[16] Rule 498 would modify certain requirements in the 1996 Profile Letter in light of both the Commission's experience with the pilot program and its broad consideration of fund disclosure requirements.[17] As in the pilot program, use of the profile would be limited to funds because the profile appears to be particularly well-suited to the structure and operation of funds and the way fund shares are marketed. Based on, among other things, the Commission's experience with the use of the profile by funds, the Commission may consider in the future extending rule 498 to other types of investment companies, including separate accounts and unit investment trusts.[18] The Commission requests comment whether and why the profile as proposed for funds would be appropriate for other types of investment companies.

Rule 498 would require 9 items of information to appear in a specific sequence and in a question-and-answer format. Standardizing the order of profile disclosure is designed to help investors locate information and compare the profiles of various funds.[19] The proposed question-and-answer format, frequently used by many funds, is intended to help communicate the required information effectively. The Commission is not proposing to limit funds to specific questions, and rule 498 would give funds the flexibility to substitute substantially similar questions to those included in the rule. The Commission requests comment on the proposed question-and-answer format and whether rule 498 instead should permit funds to choose the type of heading for the prescribed disclosure topics.

The profile would be a summary prospectus within the meaning of section 10(b) of the Securities Act.[20] As a summary disclosure document, the profile is intended to provide a concise, standardized summary of key information disclosed in a fund's prospectus.[21] Rule 498 would identify the subjects to be covered and provide guidance about the degree of detail that is appropriate for a summary document. Rule 498 would require funds to include only the information specified by the rule.[22] The 9 items of required disclosure in the profile are intended to summarize key information in a fund's prospectus. As a result, a fund would not be able to use a profile when material information relating to its particular circumstances is not addressed by the instructions for the 9 items of required disclosure. The Commission believes that the goal of achieving a short, summary disclosure document that investors can use to evaluate and compare funds would not be met unless the rule establishes certain limits on the information included in a profile. The Commission requests comment on the types of disclosure proposed to be required in the 9 items and whether other or additional items would be appropriate.

The Commission's plain English proposal, which would modify the general rule under the Securities Act addressing prospectus disclosure,[23] would apply to the profile.[24] While the release proposing the plain English

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[13] Focus Group participants indicated that they would use the profile to narrow their investment options.

[14] Focus Group participants identified the standardized, summary fund information in the profile as particularly helpful in evaluating and comparing fund investments. *See also* ICI Survey Letter, *supra* note 10, at 4.

[15] *See infra* note 97 and accompanying text.

[16] 1996 Profile Letter, *supra* note 9. Any fund that has an effective registration statement and a current prospectus would be eligible to use a profile under rule 498.

[17] *See* Form N–1A Release, *supra* note 1. *See also* ICI Survey Letter, *supra* note 10.

[18] Currently, a profile of a fund that offers shares to a separate account registered on Forms N–4 (17 CFR 274.11c) or S–6 (17 CFR 239.16) must be accompanied by the separate account's prospectus. *See* National Association for Variable Annuities (pub. avail. June 4, 1996) (permitting variable annuity registrants to use ''variable annuity profiles'' together with their prospectuses).

[19] The profile would be subject to the font size and other legibility requirements for prospectuses under rule 420 of the Securities Act (17 CFR 230.420), which requires prospectuses to be in roman type at least as large and as legible as 10-point modern type.

[20] 15 U.S.C. 77j(b). *See also* section 24(g) of the Investment Company Act, 15 U.S.C. 80a–24(g). The Commission has long-encouraged summary prospectuses under section 10(b) to supply investors with a condensed statement of the more important information included in the prospectus. In 1956, the Commission adopted a rule permitting the use of a summary prospectus under section 10(b), which was extended to investment companies in 1972. *See* Securities Act Release No. 3722 (Nov. 23, 1956) (adopting rule 434A (17 CFR 230.434A) to permit the use of a summary prospectus); Securities Act Release No. 5248 (May 9, 1972) (37 FR 10071) (extending rule 434A to investment companies); Securities Act Release No. 6383 (Mar. 3, 1982) [47 FR 11380] (renumbering rule 434A as rule 431 [17 CFR 230.431). Rule 498 is intended to replace the summary prospectuses that funds are permitted to use under rule 431, and the Commission is proposing to revise rule 431 to clarify that it is not applicable to funds. In keeping with this approach, the Commission is proposing to eliminate the ''Instructions as to Summary Prospectuses'' that accompany Form N–1A. *See* Form N–1A Release, *supra* note 1.

[21] The profile generally would provide a summary of the material elements in the prospectus, while the prospectus would provide a fuller description of each of these items. The prospectus, for example, would disclose the amount of any rule 12b–1 fees charged by a fund in the fee table and would include a narrative discussion about the fund's rule 12b–1 fees. In contrast, the profile as a summary disclosure document would disclose the amount of the fund's rule 12b–1 fees as part of the fee table disclosure. Similarly, a prospectus would identify each sub-adviser, if any, that manages a fund's portfolio while, in certain cases, a profile could disclose the number of sub-advisers managing the fund's portfolio without identifying each sub-adviser. *See* Form N–1A Release, *supra* note 1, and *infra* notes 58 and 65 and accompanying text.

[22] Proposed rule 498(b). In addition, a fund would not be allowed to use footnotes or to include cross-references within the profile or to other information, unless specifically required or permitted.

[23] Rule 421 under the Securities Act (17 CFR 230.421).

[24] In addition, an Instruction to rule 498 would advise a fund to present profile disclosure clearly and concisely, without using excessive details, legal or technical terms, complex language, or long sentences and paragraphs.

amendments was issued before this release and does not refer specifically to the profile, the Commission intends that the plain English requirements apply to all disclosure in the profile. If the proposed profile and the plain English requirements are adopted, the Commission intends to apply the plain English requirements specifically to the profile.

Under rule 498, a profile could describe more than one fund. The pilot profile, in contrast, contains information about a single fund.[25] The Commission's assessment of the pilot program and the Focus Groups conducted on the Commission's behalf indicate that a profile that describes more than one fund can achieve the goal of providing a summary disclosure document that assists investors in evaluating and comparing funds.[26] In particular, describing more than one fund in a profile can be a useful means of providing investors with investment alternatives offered by a fund group. The Commission recognizes, however, that too much information could make the profile lengthy, complex, and difficult to understand. Therefore, the Commission requests comment whether the number of funds described in a profile should be limited to one fund or some other number of funds to assure clear and concise disclosure.

B. Profile Disclosure

1. Cover Page

Rule 498 would require the cover page of the profile to include certain basic information about the fund and to disclose that the profile is a summary disclosure document.[27] The cover page would include the fund's name and, at a fund's option, could disclose the fund's investment objectives or the type of fund offered (*e.g.*, that the fund is a growth fund or invests its assets in a particular country). The profile cover page also would identify the disclosure document as a 'profile'[28] and include a legend explaining the profile's purpose. The profile legend is intended to make it clear that investors may obtain the fund's prospectus and other information about the fund before making an investment decision. In keeping with this objective, rule 498 would require a fund to provide the following legend:

> This Profile summarizes key information about the Fund that is included in the Fund's prospectus. If you would like more information before you invest, you may obtain the Fund's prospectus and other information about the Fund at no cost by calling _____.[29]

The Commission requests comment on the substance and wording of this legend. As an alternative, the Commission requests comment whether the legend should state the following:

> This Profile summarizes key information about the Fund that is included in the Fund's prospectus. The prospectus includes additional material information about the Fund that you may want to consider before you invest. You may obtain the Fund's prospectus and other information about the Fund at no cost by calling _____.

The Commission requests comment whether this statement would better inform an investor of the profile's nature as a summary document and the availability of a fuller description about the fund and its operations in the prospectus.

To assure that investors receive additional information promptly, rule 498 would require a fund to send the prospectus within 3 business days of a request. The Commission views compliance with this requirement as an essential component of the profile initiative and the goal of promoting effective communication of information about funds. The Commission's Office of Compliance Inspections and Examinations would examine a fund's compliance with the 3-day requirement and the Commission would bring an enforcement action in an appropriate case for failing to comply with the requirement.[30]

2. Risk/Return Summary

The first 4 items of the profile would be substantially identical to the disclosure required in the proposed risk/return summary at the beginning of fund prospectuses.[31] The Form N–1A Release discusses these disclosure requirements in detail and requests specific comment about certain requirements. Commenters, therefore, also should review the discussion of the risk/return summary in the Form N–1A Release.[32] The Commission expects that if the requirements for the risk/return summary change in response to comments or otherwise, conforming amendments would be made to both rule 498 and Form N–1A.

The proposed first 4 items in the profile would require disclosure in response to the following questions:

- What are the fund's goals?

To assist investors in identifying funds that meet their general investment needs, rule 498 would require a fund to disclose its investment objectives.[33] A fund, at its option, also could disclose the type of fund offered.

- What are the fund's main investment strategies?

Rule 498 would require a fund to summarize, based on the information provided in the fund's prospectus, how the fund intends to achieve its investment objectives. The summary would be required to identify the fund's principal investment strategies, including the particular type or types of securities in which the fund invests or will invest principally, and any policy of the fund to concentrate in an industry or group of industries.[34]

A fund also would be required to inform investors about the availability of additional information about the fund's investments in the fund's shareholder reports. Fund annual reports typically include management's discussion of fund performance (''MDFP''), which describes a fund's strategies that materially affected the fund's returns during the most recent

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[25] 1995 Profile Letter, *supra* note 9, at 2.

[26] *See* General Instruction C of proposed Form N–1A, *supra* note 1, for guidance on disclosing information for more than one fund in the same prospectus.

[27] Proposed rule 498. The cover page also would include the date of the profile. *See infra* note 84 and accompanying text regarding the proposed dating requirements. If the profile is distributed electronically or as part of another document (*e.g.*, when the profile is printed in a magazine), rule 498 would require cover page information to appear at the beginning of the profile.

[28] In identifying the document as a ''profile,'' a fund would be instructed not to use the term ''prospectus.'' Proposed rule 498(c)(1)(ii).

[29] *See* 1996 Profile Letter, *supra* note 9, at 1 (requiring a similar legend). A fund would be required to provide a toll-free or collect telephone number for investors to request the prospectus or other information. If applicable, a fund could indicate that the prospectus is available on its Internet site or by E-mail. When an application to purchase the fund's shares accompanies the profile, rule 498 would require the application to present with equal prominence the option to invest in the fund based on the information included in the profile or request the prospectus before making an investment decision. *See infra* text accompanying note 72. The profile disclosure about the fund's investment strategies also would inform investors about the availability of additional information in the fund's shareholder reports. *See infra* note 37 and accompanying text.

[30] Proposed rule 498(b). In addition to the 3-day mailing requirement for prospectuses, rule 498 would require a fund to send within 3 business days of a request its annual or semi-annual shareholder report and Statement of Additional Information (''SAI'). The Commission staff also would examine a fund's compliance with this requirement and the Commission would bring an enforcement action in an appropriate case for failing to comply with this requirement.

[31] *See* Items 2 and 3 of proposed Form N–1A. *See also* General Instruction C.2.(a) of proposed Form N–1A.

[32] Form N–1A Release, *supra* note 1.

[33] Proposed rule 498 (incorporating Item 2(a) of proposed Form N–1A). In providing this disclosure, a fund could refer to its investment objectives as investment goals.

[34] The criteria for determining whether a particular strategy is a principal strategy and disclosure about concentration policies are discussed in the Form N–1A Release, *supra* note 1.

fiscal year.[35] The Division's review of and experience with MDFP disclosure indicate that the annual report may be a valuable resource for investors.[36] The proposed rule would require the section of the profile relating to a fund's investment strategies to contain disclosure to the following effect: Additional information about the fund's investments is available in the fund's annual and semi-annual reports to shareholders. In particular, the fund's annual report discusses the relevant market conditions and investment strategies used by the fund's adviser that materially affected the fund's performance during the last fiscal year. You may obtain these reports at no cost by calling _____.[37]

This disclosure would be required to appear in the context of information about a fund's investments.[38] The Commission requests comment on this approach. For example, would it be more helpful to investors if the profile included under a separate caption an explanation of the various types of additional information available to investors (*e.g.*, the fund's shareholder reports and SAI)?

- What are the main risks of investing in the fund?

Narrative Disclosure. Rule 498 would require a fund to summarize the principal risks of investing in the fund based on the risk disclosure provided in the fund's prospectus.[39] The risk section of the profile would provide an overview of the risks to which the fund's particular portfolio as a whole is expected to be subject and the circumstances reasonably likely to affect adversely the fund's net asset value and performance. The risk section also would include disclosure about the risk of losing money[40] and identify the types of investors for whom the fund may be an appropriate or inappropriate investment (based on, for example, an investor's risk tolerance or time horizon). Information about whether the fund is appropriate for particular types of investors is designed to help investors evaluate and compare funds based on their investment objectives and individual circumstances.[41] A fund, at its option, also could discuss in the risk section the potential rewards of investing in the fund as long as the discussion provides a balanced presentation of the fund's risks and rewards.[42]

Special Disclosure Requirements. A money market fund and a fund advised by or sold through a bank would be required to disclose in the risk section of the profile that an investment in the fund is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency. A tax-exempt money market fund that concentrates its investments in a particular state would be required to disclose that investing in the fund may be riskier than investing in other types of money market funds, since the fund may invest a significant portion of its assets in a single issuer.

Similar disclosure for these funds currently is required to appear on the cover page of their prospectuses.[43] Consistent with the proposed risk/return summary in the prospectus, rule 498 would require this disclosure to appear in the risk section of the profile. Since the disclosure relates directly to a fund's risks, it would appear to be more meaningful to investors when presented in the context of information about the fund's risks. The proposed approach also would help streamline the profile cover page and avoid repeating information on the cover page and in the risk section of the profile.

Rule 498 would require a fund to disclose in the risk section of the profile (if applicable) that it is non-diversified.[44] To help investors understand this disclosure, rule 498 would require a non-diversified fund to describe the effects of non-diversification (*e.g.*, that, compared to diversified funds, the fund may invest a greater percentage of its assets in a particular issuer) and to summarize the risks of this practice.[45]

Risk/Return Bar Chart and Table. Rule 498 would require the risk section of the profile to include a bar chart showing a fund's calendar year returns and a table comparing the fund's average annual returns to those of a broad-based securities market index.[46] The proposed rule would require the bar chart and table to be included in the risk section of the profile under a subheading that refers to both risk and performance.[47] Over 75% of individual investors responding to a Commission release requesting comment about ways to improve risk disclosure favored a bar chart presentation of fund risks.[48] Focus Group participants found both the bar chart and a tabular presentation of fund performance (particularly when the table included return information for a broad-based securities market index) helpful in evaluating and comparing fund investments.

The bar chart would present a fund's returns for each of the last 10 calendar years and would illustrate graphically a fund's past risks by showing changes in the fund's returns over time.[49] The table would present the fund's average annual

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[35] *See* Item 5 of proposed Form N–1A.

[36] Commenters also have cited the annual report as a source of valuable information. *See* Voss Sanders, *Dear Shareholder,* Morningstar Mutual Funds, Apr. 26, 1996, at 1 (commenting on improved annual report disclosure).

[37] If applicable, a fund could indicate that its annual and semi-annual reports are available on its Internet site or by E-mail request. In addition, a fund that provides its MDFP in the prospectus or a money market fund (which is not required to prepare a MDFP) would omit the second sentence of this disclosure.

[38] The 1996 Profile Letter, *supra* note 9, at 1, contemplates that information about the availability of a fund's shareholder reports appear at the beginning of the profile.

[39] Proposed rule 498(c)(2)(iii) (incorporating Item 2(c) of proposed Form N–1A). *See also* Form N–1A Release, *supra* note 1 (regarding fund risk disclosure proposed to be required in the prospectus).

[40] In recognition of the relative safety of money market funds, a money market fund would be required to state that: Although the fund seeks to preserve the value of your investment at $1.00 per share, it is possible to lose money by investing in the fund.

[41] The 1996 Profile Letter, *supra* note 9, at 2, requires information about the appropriateness of the fund for particular types of investors to be presented under a separate caption. Because this information is closely related to the risks of investing in a fund, rule 498 would integrate this disclosure into the discussion of a fund's risks.

[42] The 1996 Profile Letter, *supra* note 9, at 2, permits disclosure about the rewards of investing in a fund only if presented separately from disclosure about the fund's risks.

[43] *See* Item 1(a)(vi) and (vii) of Form N–1A; Letter to Registrants from Carolyn B. Lewis, Assistant Director, Division of Investment Management, SEC, at II.B (Feb. 25, 1994).

[44] *See* Investment Company Act section 5(b) (15 U.S.C. 80a–5(b)) (regarding diversified and non-diversified funds).

[45] The 1996 Profile Letter, *supra* note , at 2, requires a fund to disclose without further explanation that it is non-diversified.

[46] Proposed rule 498 (incorporating Item 2(c) of proposed Form N–1A).

[47] The 1996 Profile Letter, *supra* note , at 2–3, requires the bar chart and table to appear under a caption relating to a fund's past performance. To help investors use the information in the bar chart and table, the proposed rule would require a fund to explain how the information illustrates the fund's risks and performance. Item 2 of proposed Form N–1A would provide the following example of this explanation: This information illustrates the fund's risks and performance by showing changes in the fund's performance from year to year and by showing how the fund's average annual returns for one, five, and ten years compare to those of a broad measure of market performance. A fund also would be required to disclose that how the fund has performed in the past is not necessarily an indication of how the fund will perform in the future.

[48] *See* Risk Concept Release, *supra* note .

[49] The proposed rule would require the bar chart of a fund in operation for fewer than 10 years to include annual returns for the life of the fund. In addition, a fund would be required to have at least one calendar year of returns before including the bar chart. A fund that includes a single bar in the bar chart or a fund that does not include the bar chart because the fund does not have annual returns for a full calendar year would be required to modify, as appropriate, the narrative explanation accompanying the bar chart and table (*e.g.*, by stating that the information shows the fund's risks and performance by comparing the fund's performance to a broad measure of market performance). *See* Item 2 of proposed Form N–1A.

returns for the last one, five, and ten fiscal years (or for the life of the fund, if shorter) and would provide comparable return information for a broad-based securities market index.[50] Requiring comparative return information for a broad-based market index would provide investors with a basis for evaluating a fund's performance and risks relative to the market.[51] The proposed approach also would be consistent with the line graph presentation of fund performance required in MDFP disclosure. Rule 498 would permit a fund to include return information for other indexes, including a ''peer group'' index of comparable funds.

While the average annual return information for the fund in the table would reflect the payment of any sales loads charged by the fund, the return information in the bar chart would not reflect sales loads.[52] Sales loads can be accurately and fairly reflected in return information of the type contained in the table by deducting sales loads at the beginning (or end) of particular periods from a hypothetical initial fund investment. Reflecting sales loads in the bar chart, however, may be impracticable. In addition, reflecting the payment of sales loads may be less important in the bar chart than in the table, since the bar chart is intended primarily to depict fund risks graphically. A fund that charges sales loads would be required to disclose that sales loads are not reflected in the bar chart and that, if the loads were included, returns would be less than those shown.[53]

Rule 498 would require a multiple class fund to include return information in the bar chart for only one class. Because the returns of each class differ only to the extent the classes do not have the same expenses, including return information in the bar chart for all classes appears to be unnecessary to illustrate the risks of investing in the fund.[54] Rule 498 would require the bar chart to reflect annual return information for the class offered in the profile that has returns for the longest period over the last 10 years. This approach is intended to provide the greatest amount of information about changes in the fund's returns.[55]

Rule 498 would require a fund to provide in the table its average annual returns and those of a broad-based securities market index as of the end of the most recent calendar quarter prior to the profile's first use. A fund would be required to update this information for each succeeding calendar quarter as soon as reasonably practicable following the completion of the quarter. To avoid having to reprint the profile, a fund would be permitted to update performance information by using, for example, a sticker or stamp reflecting the updated information.

- What are the fund's fees and expenses?

Consistent with current prospectus disclosure, the profile would include a fee table summarizing a fund's fees and expenses, including any sales loads charged in connection with an investment in the fund.[56] Fees and expenses directly affect a fund's performance and can be important elements of an investment decision for fund investors. The fee table is designed to help investors understand the costs of investing in a fund and compare those costs with the costs of other funds.[57]

Other Disclosure Requirements

Rule 498 would require the profile to include disclosure about additional key aspects of a fund investment in response to the following questions:

- Who are the fund's investment adviser and portfolio manager?

Rule 498 would require a fund to identify its investment adviser and the person or persons primarily responsible for the day-to-day management of the fund's portfolio (''portfolio manager'').[58] Rule 498 also would require information about the length of time the portfolio manager has managed the fund and a summary of the portfolio manager's business experience for the last 5 years. Focus Group participants indicated that information about a fund's portfolio manager was important in evaluating and comparing fund investments.[59]

When several persons act together to manage a fund's portfolio, profile disclosure, like the portfolio manager disclosure required in fund prospectuses, would indicate that a committee has primary responsibility for the fund's portfolio management.[60] When 3 or more persons each manage *a portion* of the portfolio, rule 498 would permit a fund to identify the number of persons managing the portfolio without naming each manager, except that, if a portfolio manager manages 40% or more of the fund's portfolio, information about that manager would be require to be disclosed.[61] When portions of a fund's portfolio are managed by several persons, the fund's risks and returns generally are less dependent on the activities of a particular person. Focusing profile disclosure on the number of a fund's portfolio managers would inform investors about the shared responsibility for the fund's portfolio management without adding unnecessary length to the profile. In addition, requiring information about any portfolio manager who manages 40% or more of a fund's portfolio would assure that disclosure would be provided when a portfolio manager has

[50] A money market fund would be required to include its 7-day yield in the table. A non-money market fund would be permitted to disclose its yield, and any fund (including a money market fund) would be permitted to disclose its tax-equivalent yield. When yield information is disclosed, a fund would be required to include a toll-free (or collect) telephone number that investors can use to obtain current yield information.

[51] *See* 1996 Profile Letter, *supra* note , at 3 (permitting a fund, at its option, to compare its returns to those of an appropriate broad-based securities market index).

[52] The annual returns in the bar chart would be calculated using the same method required by Item 9 of proposed Form N–1A to calculate annual returns in the financial highlights information included in fund prospectuses. As in the case of annual returns in the financial highlights information, the returns in the bar chart would not reflect sales loads or account fees. The average annual returns included in the table would be calculated using the same method required by Item 21 of proposed Form N–1A to calculate fund performance included in advertisements, which reflects the payment of sales loads and recurring shareholder account fees. *See also* Item 5 of proposed Form N–1A (requiring sales loads and recurring shareholder account fees to be reflected in the return information shown in the line graph in the MDFP).

[53] Similar disclosure would be required if a fund charges account fees.

[54] In addition, the table accompanying the bar chart would provide return information for each class offered in the profile.

[55] When two or more classes included in the profile have returns for at least 10 years or returns for the same period but fewer than 10 years, the fund would be required to provide annual returns for the class with the greatest net assets as of the end of the fund's most recent fiscal year. Focusing on the class with the greatest net assets is intended to provide returns in the bar chart for a ''representative'' class offered in the profile.

[56] Proposed rule 498 (incorporating Item 3 of proposed Form N–1A). *See also* Item 2(a) of Form N–1A.

[57] *See* Form N–1A Release, *supra* note (proposing amendments to improve fee table disclosure).

[58] Proposed rule 498. Consistent with Item 6(a)(2) of proposed Form N–1A, rule 498 would not require information about the portfolio manager of a money market fund or an index fund.

[59] *See also* ICI Survey Letter, *supra* note , at 9 (recommending that the profile include this information).

[60] *See* Instruction 3 to Item 6(a)(2) of proposed Form N–1A.

[61] The 1996 Profile Letter, *supra* note , at 3, permits a fund to disclose that 3 or more persons manage the fund's portfolio, without regard to the percentage of the portfolio managed by any one person.

significant responsibilities with respect to the fund's portfolio.

A fund would be required to identify a sub-adviser (if any) subject to two exceptions.[62] First, rule 498 would not require a fund to identify a sub-adviser whose sole responsibility for the fund is limited to routine cash management.[63] Responsibility for routine cash management generally is incidental to a fund's investment objectives and unlikely to affect the fund's overall portfolio management and risks.[64] Second, consistent with the proposed approach for portfolio manager disclosure, rule 498 would permit a fund with 3 or more sub-advisers, each of which manages a portion of the fund's portfolio to disclose the number of sub-advisers without giving the name of each sub-adviser, except that the identity of any sub-adviser that manages 40% or more of the fund's portfolio would be required to be disclosed.[65]

The Commission requests comment on the proposed approach when 3 or more portfolio managers or sub-advisers each manage a portion of a fund's portfolio. The Commission requests specific comment on the proposed exceptions for providing information about any portfolio manager and the identity of any sub-adviser that manages 40% or more of a fund's portfolio. In particular, the Commission requests comment whether a lower or higher percentage would be appropriate. The Commission also requests comment on alternatives that would simplify this disclosure while continuing to provide information about a portfolio manager or sub-adviser that has significant responsibilities for management of a fund's portfolio.

• How do I buy the fund's shares? How do I sell the fund's shares?

Rule 498 would require a fund to describe in the profile under two separate questions how to purchase and how to redeem the fund's shares.[66] The purchase section of the profile would include information on minimum investment requirements (*e.g.*, initial and minimum account balances) and, when applicable, any breakpoints in or waivers of sales loads.[67]

Apart from the general requirement to provide summary information and concise disclosure, rule 498 would not limit the extent of purchase and redemption information included in a profile. Funds participating in the pilot program disclosed this information concisely when the profile accompanied the prospectus. When a profile is used without the prospectus, however, a fund may find it necessary to disclose more extensive information about purchase and redemption procedures and, in particular, sales load breakpoints and waivers.[68] Including detailed purchase, redemption, and sales load information in the profile would appear to be inconsistent with the profile's purpose as a summary disclosure document. For this reason, the Commission requests comment whether rule 498 should impose any restrictions on the disclosure of purchase and redemption information. Commenters favoring limiting this disclosure are asked to provide specific suggestions for requirements that would serve to limit the disclosure while providing information that would assist fund investors in making investment decisions. Should the rule, for example, require a fund to summarize sales load information by showing the highest and lowest sales load breakpoints?

• How are the fund's distributions made and taxed?

Rule 498 would require the profile to describe how frequently a fund intends to make distributions and what reinvestment options (if any) are available to investors. Rule 498 also would require a fund other than a tax-exempt fund to state, as applicable, that the fund intends to make distributions that may be taxed as ordinary income and capital gains.[69] A tax-exempt fund would be required to state that it intends to distribute tax-exempt income and to disclose, as applicable, that a portion of its distributions may be taxable.[70]

• What other services are available from the fund?

Rule 498 would require the profile to summarize or list the services available to the fund's investors (*e.g.*, any exchange privileges or automated information services).[71] Funds increasingly offer a wide variety of shareholder services. Information about the services offered by a particular fund may be useful to investors and help investors compare the services offered by different funds.

Application to Purchase Shares

Rule 498 would permit a fund to include an application with the profile to purchase the fund's shares.[72] To make

[62] *See* section 2(a)(20) (15 U.S.C. 80a–2(a)(20)) (defining ''investment adviser'' to include a sub-adviser).

[63] In contrast, the 1996 Profile Letter, *supra* note 9, at 3, requires disclosure about a sub-adviser only if it manages a material portion of a fund's portfolio.

[64] Information about a fund's cash management practices generally would not be disclosed in the section of the profile that discusses the fund's main investment strategies. *See* Form N–1A Release, *supra* note (prospectus disclosure would focus on a fund's principal strategies, which generally would not include the fund's cash management practices).

[65] *See* 1996 Profile Letter, *supra* note , at 3 (permitting a fund to provide disclosure to the effect that 3 or more sub-advisers manage the fund's portfolio without regard to the percentage of the portfolio managed by any one sub-adviser). To further limit the scope of this exception, a sub-adviser solely responsible for managing a fund's cash positions would not be counted in determining whether 3 or more sub-advisers manage the fund's portfolio.

[66] Proposed rule 498, (vii).

[67] To help investors understand the meaning of the term ''sales load,'' proposed Form N–1A would require the fee table and narrative discussion of sales loads in the prospectus to refer to ''sales fees (loads).'' This approach also would apply to profile disclosure.

[68] Fund prospectuses, for example, often include detailed information about automatic investment programs, telephone and wire redemption requests, rights of accumulation and letters of intent that can be used to reduce sales loads, and sales load waivers for particular classes of investors and transactions. *See also* Form N–1A Release, *supra* note 1 (proposing to modify certain prospectus disclosure requirements to focus prospectus disclosure on the amount of the sales load charged in connection with a fund investment).

[69] Proposed rule 498(c)(2)(iii). If a fund, as a result of its investment objectives or strategies, expects its distributions primarily to consist of ordinary income (or short-term capital gains that are taxed as ordinary income) or capital gains, the fund would be required to provide disclosure to that effect.

[70] Rule 498 would give a tax-exempt fund the option of providing specific disclosure about its taxable distributions or a general statement that a portion of its distributions may be taxable. A fund choosing to disclose specific information would be required to provide the disclosure required by Item 7(d)(2)(ii) of proposed Form N–1A (*i.e.*, The fund would be required to state, as applicable, that: (1) the fund may invest a portion of its assets in securities that generate income that is not exempt from federal or state income tax; (2) income exempt from federal income tax may be subject to state and local income tax; (3) any capital gains distributed by the fund may be taxable; and (4) a portion of the tax-exempt income distributed by the fund may be treated as a tax preference item for purposes of determining whether the shareholder is subject to the federal alternative minimum tax).

[71] Proposed rule 498(c)(2)(ix). Some funds using pilot profiles disclosed services relating to the purchase and redemption of the fund's shares (*e.g.*, telephone redemption procedures) in the purchase and redemption sections of the profile, while other funds disclosed this information in the section of the profile relating to the services offered by the fund. Rule 498 would continue to give a fund the flexibility to disclose, as appropriate, information about its services in the purchase, redemption, *or* fund services sections of the profile. To keep profile disclosure concise, rule 498 would not permit information discussed in the purchase and redemption sections to be repeated in the section relating to fund services.

[72] Proposed rule 498(c)(3). Rule 482 under the Securities Act (17 CFR 230.482) prohibits a fund from including an application to purchase the fund's shares in an advertisement. This prohibition was based on concerns that an application would be inconsistent with the purpose of rule 482, which was to provide certain information about a fund and a means of requesting a fund's prospectus. *See* Fund Performance Release, supra note 5. In 1993, the Commission proposed to amend rule 482 to permit advertisements containing significantly

Continued

it clear that investors may review the prospectus before investing, rule 498 would require the application to present with equal prominence the options of investing in the fund based on the information in the profile or requesting the fund's prospectus before making an investment decision.

Disclosure Safeguards

The federal securities laws specifically contemplate the use of a summary prospectus, such as the profile, for offering securities.[73] As a consequence, existing protections under the federal securities laws would apply to false or misleading statements in a profile. The general provisions of sections 12(a)(2) and 17(a) of the Securities Act, which impose civil and criminal liability upon any person who offers or sells securities based on false or misleading statements, would apply to a profile as a summary prospectus.[74] The anti-fraud provisions of section 10(b) of the Securities Exchange Act of 1934 and rule 10b–5 under that Act also would apply.[75] Section 10(b) of the Securities Act also authorizes the Commission to suspend the use of a summary prospectus if it includes false or misleading statements.[76]

Rule 498 would not permit a profile to incorporate by reference the information included in the fund's prospectus or any other disclosure document filed with the Commission.[77] The profile is designed to summarize prospectus information in a self-contained format that would assist an investor in making an investment decision or in deciding to request additional information. Permitting a fund to incorporate by reference into the profile information included in the prospectus would mean that information in the prospectus would be considered to be part of the profile disclosure.[78] This result would not be consistent with the purpose of the profile, which is to offer investors the option to make an investment in a fund based solely on the information in the profile.

Although investors would be able to purchase a fund's shares based on the summary information contained in a profile, the prospectus would remain the primary disclosure document under the federal securities laws. To inform investors about the availability of the prospectus, the profile would be required to include a legend on the cover page stating that more information is available in the prospectus, and the application accompanying the profile would be required to give equal prominence to the options of requesting a prospectus or investing in the fund. A fund would be required to deliver its prospectus either in response to an investor's request or with the purchase confirmation.[79]

D. Filing Requirements

Rule 498 would require a fund to file the profile with the Commission at least 30 days before its first use.[80] The pre-use filing requirement would allow the Commission to monitor compliance with rule 498's disclosure requirements and reduce the possibility of misleading information in a profile.[81] Subsequently, a fund would have to file any profile containing substantive changes to a previously filed profile 30 days before use.[82] No filing would be required for a previously filed profile that is revised only to update return information. The Commission requests comment on the proposed filing requirements, including whether the pre-use filing period of 30 days should be shorter or longer.

Rule 498 would require the profile filed with the Commission to be dated approximately as of the date of its first use.[83] Rule 498 also would require a fund to add the date of the most recent performance information included in the profile.[84] This requirement would alert investors to the updated performance information in the profile, while assisting the Commission staff in responding to inquiries by identifying the date of the profile filed with the Commission.

The profile would be filed electronically on the Commission's electronic data gathering analysis and retrieval system (''EDGAR'').[85] The availability of the profile on EDGAR

more information about a fund and a purchase application. Investment Company Act Release No. 19342 (Mar. 5, 1993) (58 FR 16141). Unlike the proposed amendments to rule 482, rule 498 would require a profile to present a summary of key information about a fund in a standardized format and is being proposed by the Commission in conjunction with proposed amendments to Form N–1A that are designed to improve the disclosure provided in fund prospectuses. In connection with proposed rule 498, the Commission is proposing to amend rule 482 to clarify that it would not apply to profiles.

[73] Section 10(b) of the Securities Act permits the use of a summary prospectus (which provides information the substance of which is included in the prospectus) to communicate information for purposes of an offer under section 5(b)(1) of the Securities Act (15 U.S.C. 77e(b)(1)). Section 5(b)(2) of the Securities Act (15 U.S.C. 77e(b)(2)) requires, as a condition of selling a security, the delivery to investors of a prospectus that meets the requirements of section 10(a) of the Securities Act (15 U.S.C. 77j(a)). To meet this requirement, rule 498 would require a fund to provide its section 10(a) prospectus in response to an investor's request or, as required by section 5(b)(2), to provide the prospectus prior to or with the purchase confirmation. Recent legislation added new section 24(g) to the Investment Company Act authorizing the Commission to adopt rules permitting a fund to use a summary prospectus that includes information the substance of which is not included in the prospectus. National Securities Markets Improvement Act of 1996, Pub. L. No. 104–290 (1996), section 204 (amending section 24 to add new paragraph (g)).

[74] 15 U.S.C. 77*l*(a)(2); 15 U.S.C. 77q(a).

[75] 15 U.S.C. 78j(b); 17 CFR 240.10b–5. *See also* Fund Performance Release, *supra* note 5, at 3878 (for anti-fraud purposes, disclosure in a section 10(a) prospectus will not cure a false or misleading advertisement (or ''omitting prospectus'' under section 10(b) of the Securities Act) permitted under rule 482).

[76] This administrative remedy supplements the Commission's stop order authority under section 8 of the Securities Act (15 U.S.C. 77h). Section 10(b) of the Securities Act specifically excludes summary prospectuses from section 11 of the Securities Act (15 U.S.C. 77k), which imposes strict liability for misleading statements in a prospectus. Congress adopted this exception to encourage the use of summary prospectuses. The exception was justified on the basis that the Commission's review of summary prospectuses would disclose deficiencies that could be corrected, and that the section 10(a) prospectus has to be delivered at or before the time a buyer receives the securities. *See* I L. Loss & J. Seligman, Securities Regulation 480 & n.214 (3d ed. 1989) *(citing* S. Rep. 1036, 83d Cong., 2d Sess. 17–18 (1954) and H.R. Rep. 1542, 83d Cong., 2d Sess. 26 (1954)). If a misleading statement is included in both the prospectus and a profile, section 11 would apply to the sale of the fund's securities. *See id.*

[77] Proposed rule 498(b). *See* General Instruction D to proposed Form N–1A (permitting the SAI to be incorporated by reference in the prospectus, and other documents filed with the Commission to be incorporated by reference in the SAI and other parts of the Form N–1A registration statement).

[78] *See* White v. Melton, 757 F. Supp. 267, 271 (S.D.N.Y. 1991). *See also* Investment Company Act Release No. 13436 (Aug. 12, 1983) (48 FR 37928, 37930).

[79] *See also supra* note 30 and accompanying text (a fund would be required to send the prospectus within 3 business days of a request).

[80] Rule 498 would require a fund to file the profile under rule 497, which sets out general filing requirements for fund prospectuses. New paragraph (k) to rule 497 would include the profile filing requirements. If the profile is revised during the 30-day period, a fund would be required to file a definitive copy of the profile within 5 business days of its use so that the Commission has a filed copy that is the same as the profile given to investors.

[81] The Commission has determined that it is not necessary or appropriate in the public interest or for the protection of investors to require that the profile be filed as part of a registration statement. Filing the profile as part of a registration statement would impose unnecessary burdens, would restrict the flexible use of the profile, and would not add to the Commission's ability to monitor the disclosure in the profile.

[82] Non-substantive changes to a profile would not require a filing before use of the profile, although a copy would be required to be filed within 5 days of use.

[83] Proposed rule 498(c)(1)(iii).

[84] A profile, for example, showing January 1, 1998 as its date of first use could include a parenthetical below the January date indicating that the profile has been ''updated as of March 31, 1998.''

[85] Rule 101(a)(1)(i) of Regulation S–T (17 CFR 232.101(a)(1)(i)) requires prospectuses filed pursuant to the Securities Act to be submitted in electronic format.

would permit public access to fund information in profiles. Although EDGAR does not currently reproduce graphic images (such as the profile bar chart),[86] the EDGAR rules require a fair and accurate narrative description or tabular representation in the place of any omitted material.[87] To assist the Commission's review of the content, use, and effectiveness of the profile, including the bar chart, a fund would be required to file 2 copies of the profile in the primary form intended to be distributed to investors (*e.g.*, paper or electronic media).[88] This requirement would expire 2 years after the effective date of rule 498 because the Commission expects that the format and use of the profile would become largely routine and standardized by that time, and the pre-use filing of the profile on EDGAR would be sufficient to monitor compliance with the profile disclosure requirements.

E. Dissemination of Profiles

Rapidly changing technology, particularly the electronic distribution of information, has enhanced investors' access to securities-related information. The Commission has recognized these developments by allowing funds (and other registrants) maximum flexibility in the choice and use of distribution media.[89] In keeping with this approach, rule 498 would not limit a fund's use of any particular medium for disseminating the profile. A profile could be made available through direct mail and mass print (*e.g.*, magazines and newspapers), broadcast, and electronic media. Permitting broad dissemination of the profile would be consistent with and further the purposes for which the profile is designed—to provide information about a fund in a standardized and readily accessible format.

As in the case of other disclosure documents, the general requirements of the federal securities laws would impose certain limitations on the distribution of a profile. The means of distributing the profile would be required to communicate the information in the profile effectively and to enable an investor to review the disclosed information.[90] Each version of a profile *(e.g.*, electronic or paper) would be required to contain all of the information required by rule 498.[91] In addition, while the profile may be delivered without a prospectus, a profile accompanied by sales literature cannot be delivered without the prospectus.[92]

Electronic media, such as the Internet, may be particularly well-suited for the delivery of the profile to investors.[93] Including the profile together with the prospectus (and other information) at a fund's Internet site also may be a more efficient method for funds to disseminate disclosure documents. Electronic availability of both the profile and prospectus could mean that investors could easily invest in a fund and access the fund's prospectus for more information.[94] An investor's use of an electronic application in the profile would create a presumption of delivery of the prospectus if both the profile and the prospectus are available at the same electronic site.[95] A fund that does not electronically disseminate the profile and prospectus together could not rely on this presumption and would be required to provide a copy of the prospectus with the purchase confirmation.

F. Defined Contribution Plans

Investors in participant-directed defined contribution plans (''plans'') may find a profile helpful in evaluating and comparing the funds offered as investment alternatives in a plan.[96] Certain information required by rule 498, however, appears to be unnecessary for plan participants because of the way these plans are structured and regulated. The requirements of the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code, and the terms of individual plans govern, among other things, participant investments and plan distributions (including the tax consequences of distributions).[97]

To enable a fund to use a profile that is tailored for use by plan participants, rule 498 would permit a profile to omit information relating to the purchase and

[86] The Commission anticipates future modifications that would permit EDGAR to reflect graphic images in electronically filed documents.

[87] Rule 304(a) of Regulation S–T (17 CFR 232.304(a)). Immaterial differences between delivered and electronically filed documents, such as pagination, color, type size, or corporate logo, need not be described.

[88] Proposed rule 497(k)(5).

[89] *See* Investment Company Act Release No. 21399 (Oct. 6, 1995) (60 FR 53458, 53460 & n.20) (''Electronic Distribution Release'') (providing guidance on the electronic delivery of documents, including prospectuses, shareholder reports, and proxies, under the Securities Act, the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), and the Investment Company Act); Investment Company Act Release No. 21945 (May 9, 1996) (61 FR 24644) (addressing the use of electronic media by broker-dealers, transfer agents, and investment advisers); Investment Company Act Release No. 21946 (May 9, 1996) (61 FR 24652) (''Release 21946'') (adopting technical amendments to rules premised on the delivery of paper documents).

[90] Electronic Distribution Release, *supra* note 89, at 53460 & n.20. Some media, particularly broadcast media, may be inappropriate for disseminating the profile because they may not communicate the profile information effectively *(e.g.*, the bar chart may not be effectively conveyed by a radio broadcast) or provide a meaningful opportunity for retaining the information *(e.g.*, a short television commercial).

[91] Release 21946, *supra* note 89, at 24653. A document, whether delivered electronically or on paper, must contain all required information and, if the order of information has been specified, must present the information in substantially the prescribed order. Electronic Distribution Release, *supra* note 89, at 53460 n.20.

[92] *See* section 2(a)(10)(a) of the Securities Act (15 U.S.C. 77b(a)(10)(a)) (excluding sales literature from the definition of a ''prospectus'' (and from the filing requirements under the Securities Act) if a section 10(a) prospectus (but not a summary prospectus under section 10(b)) precedes or accompanies the sales literature).

[93] Electronic media include, for example, electronic bulletin boards, E-mail, facsimiles, Internet sites, audiotapes, and videotapes. Electronic Distribution Release, *supra* note 89, at 53458 n.9.

[94] A fund could provide a hyperlink to the prospectus from the profile. A hyperlink in a document (which, for example, may be an underlined word or phrase) permits a viewer to ''jump'' to another document (or part of the same document) with a mouse click. The words ''investment strategies'' in the profile, for example, could be set up as a hyperlink to the discussion of investment strategies in the prospectus. Using hyperlinks would promote the profile's role as a gateway for fund investors to obtain additional information in the prospectus and other documents.

[95] *Cf.* Electronic Distribution Release, *supra* note 89, at 53465–66 (example (39)) (''If the fund can identify the application form as coming from the electronic system that contains both the application and the prospectus, electronic delivery of the prospectus can be inferred.'').

[96] In 1995, the Division issued a no-action letter confirming that certain informational materials about a fund offered as an investment option in a plan could be treated as an omitting prospectus under rule 482 of the Securities Act. Fidelity Institutional Retirement Services Company, Inc. (pub. avail. Apr. 5, 1995). The informational materials, which were intended to be distributed to plan participants, disclosed only information included in the fund's prospectus *(i.e.*, the fund's investment objectives, policies and risks, expenses, past performance, and distribution practices) and contained a legend informing participants of the availability of the fund's prospectus.

[97] *See* 29 U.S.C. 1104(c). The most prevalent type of defined contribution plan is the 401(k) plan (26 U.S.C. 401(k)), which allows an employee to defer receipt and taxation of a portion of his or her salary and permits an employer to match a percentage of the employee's contributions. A 401(k) plan typically provides for individual accounts and permits a participant to exercise control over the assets in his or her account. These plans often provide several investment options, frequently including one or more funds. *See* Investment Company Institute, Mutual Fund Fact Book 87 (36th ed. 1996) (at the end of 1995, more than $161 billion, or 31%, of 401(k) assets were invested in funds). Section 404(c) of the Employee Retirement Income Security Act of 1974 and related rule 404c–1 (29 CFR 2550.404c–1) exempt fiduciaries of a 401(k) plan from liability for investment losses if a plan participant exercises control over the assets in his or her account. A participant is deemed to ''exercise control'' if, among other things, the plan offers at least 3 investment alternatives and a participant is provided or has the opportunity to obtain sufficient information to make informed decisions about the plan's investment alternatives.

sale of fund shares, fund distributions, and tax consequences.[98] In addition, since some fund services *(e.g.,* exchange privileges) may not apply to plan participants, rule 498 would permit a fund to omit this information. Rule 498 would permit a fund to include the plan's enrollment form in lieu of the application form because the plan effects purchases and sales of a fund's shares on behalf of plan participants.[99] The cover page of the profile would disclose, as required by rule 498, that a fund's prospectus and other disclosure documents are available upon request.[100] The Commission requests comment whether other information required by rule 498 may not be useful for plan participants and could be omitted when a profile is used in connection with a plan.

General Request for Comments

The Commission requests that any interested persons submit comments on proposed rule 498 and other proposed amendments that are the subject of this release, suggest additional changes (including changes to related rules and forms that the Commission is not proposing to amend), or submit comments on other matters that might affect the proposed changes. Commenters suggesting alternative approaches are encouraged to submit proposed rule or form text. For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), the Commission also is requesting information regarding the potential impact of the proposed rule on the economy on an annual basis. Commenters should provide empirical data to support their views.

IV. Paperwork Reduction Act

Proposed rule 498 contains ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), and the Commission has submitted the proposed rule to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for the collection of information is ''Profiles for Open-End Management Investment Companies.'' Responses to the collection of information will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Section 10(a) of the Securities Act describes the type of information required in a prospectus used to offer securities for sale under section 5(b)(1) of the Securities Act. Sections 10(b) of the Securities Act and 24(g) of the Investment Company Act permit the Commission to allow the use of a prospectus by a fund that omits or summarizes information required by section 10(a). The Commission is proposing the profile as a summary prospectus under this authority.

Under proposed rule 498, the profile would present a summary of key information about a fund, including the fund's investment strategies, risks, performance, and fees, in a concise, standardized format. Investors would have the option of purchasing a fund's shares based on information in the profile or reviewing the fund's prospectus (and other information) before investing.

Under rule 498, use of the profile is permissive, but the rule is mandatory for those funds that elect to use a profile. The Commission expects funds would not choose to prepare and use a profile for every investment portfolio (''portfolio'') they offer. In addition, a prospectus, and if used, a profile, may offer the securities of several portfolios. If a fund chooses to use a profile, it would be filed before its first use. Subsequent filings may be necessary if there are significant changes to the profile.

The Commission estimates that there are approximately 180 *new* registration statements filed by funds annually and that approximately 300 investment portfolios are included in initial registrations. The Commission estimates that funds would elect to use a profile for approximately one-third of these portfolios and a profile would include information for approximately two portfolios. Based on these estimates, the preparation and filing of profiles under rule 498 for these funds would represent a total annual burden of 1,250 hours (50 profiles x 25 hours per profile). The Commission estimates that there are approximately 2,700 registered open-end investment companies that have *effective* registration statements on Form N–1A representing approximately 7,500 portfolios. The Commission estimates that these funds would elect to use a profile for approximately one-third of these portfolios and that a profile would include approximately two portfolios. Based on these estimates, the total annual burden for preparing, filing, and updating a profile would be 12,500 hours (1,250 profiles x 10 hours per profile) for funds with effective registration statements. For these two categories of filers (*i.e.,* funds filing new registration statements and funds with effective registration statements), the total annual burden of preparing, filing, and updating profiles is 13,750 hours.

Under 44 U.S.C. 3506(c)(2)(B), the Commission solicits comment to: (i) evaluate whether the proposed collection of information is necessary for the proper performance of the Commission's function, including whether the information shall have practical utility; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons desiring to submit comments on the collection of information requirements should direct them to the OMB, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, D.C. 20503, and should also send a copy of their comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th St., NW., Mail Stop 6–9, Washington, DC 20549–6009, with a reference to S7–18–96. The OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication, so a comment to OMB is best assured of having its full effect if the OMB receives it within 30 days of publication.

Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis (''Analysis'') in accordance with 5 U.S.C. 603 regarding proposed rule 498. The Analysis explains that the proposal would permit a fund to provide prospective investors with a profile, which would be a summary prospectus under section 10(b) of the Securities Act and section 24(g) of the Investment Company Act. The Analysis explains that a profile would include a summary of key information about a fund and give investors the option of purchasing the fund's shares based on the information in the profile or requesting

[98] Proposed rule 498.

[99] The enrollment form would not be required to be filed with the Commission because the form would be the responsibility of the company offering the plan and prepared in accordance with the plan's requirements and applicable law.

[100] General Instruction C of proposed Form N–1A would include similar revisions to prospectus disclosure requirements to allow funds to omit certain information from prospectuses that are limited to use in the retirement plan market. Form N–1A Release, *supra* note 1.

the fund's prospectus before making an investment decision. The Analysis also explains that the profile is intended to provide a standardized summary of 9 items of information about a fund in a specific order and in a question-and-answer format designed to help investors evaluate and compare funds.

The Analysis discusses the impact of the proposed rule on small entities, which are defined, for the purposes of the Securities Act and Investment Company Act, as investment companies with net assets of $50 million or less as of the end of the most recent fiscal year (17 CFR 230.157(b) and 270.0–10). The Commission estimates that there are approximately 620 small entity investment companies, and that approximately one-third (207) could choose to use proposed rule 498. As explained in more detail in the Analysis, the Commission estimates that the total hour burden on small entities to prepare, file, and update the profile annually would be approximately 2,420 hours. While the profile would include a summary of information about the fund included in the prospectus, the disclosure requirements for the profile and the prospectus are designed for different purposes. The Commission believes that there are no other duplicative, overlapping, or conflicting federal rules.

The Analysis explains that proposed rule 498 would not be significantly burdensome for small entities because use of the profile is optional and the profile is intended to be a standardized summary of information required to be disclosed in a fund's prospectus. In addition, some investors may use profiles instead of prospectuses to narrow their choices among funds, which would reduce printing and distribution costs. Lower printing and distribution costs could benefit small entities as much or more than large funds.

As stated in the Analysis, the Commission considered several alternatives to proposed rule 498, including, among others, establishing different compliance or reporting requirements for small entities or exempting them from all or part of the proposed rule. Because use of the profile would be optional, and the profile, if used, would contain the same disclosure that other funds are required to include in the profile, the Commission believes that the proposed rule would not impose additional burdens on small entities and separate treatment for small entities would be inconsistent with the protection of investors.

The Commission encourages the submission of comments on the Analysis, including specific comment on (i) the number of small entities that would be affected by the proposed rule and (ii) the discussion of the impact of the proposed rule on small entities. Comments will be considered in the preparation of the Final Regulatory Flexibility Analysis if the proposed rule is adopted. A copy of the Analysis may be obtained by contacting Markian M.W. Melnyk, Senior Counsel, Securities and Exchange Commission, 450 5th Street, NW., Mail Stop 10–2, Washington, DC. 20549–6009.

VI. Statutory Authority

The Commission is proposing rule 498 under sections 5, 7, 8, 10, and 19(a) of the Securities Act (15 U.S.C. 77e, 77g, 77h, 77j, and 77s(a)) and sections 8, 22, 24(g), 30, and 38 of the Investment Company Act (15 U.S.C. 80a–8, 80a–22, 80a–24(g), 80a–29, and 80a–37). The authority citations for the rule precede the text of the amendments.

VII. Text of Proposed Rule

List of Subjects in 17 CFR Part 230

Investment companies, Reporting and recordkeeping requirement, Securities.

For the reasons set out in the preamble, the Commission proposes to amend Chapter II, Title 17 of the Code of Federal Regulations as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 77d, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79t, 80a–8, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

2. Amend § 230.431 to revise the introductory text of paragraph (a) to read as follows:

§ 230.431 Summary prospectuses.

(a) A summary prospectus prepared and filed (except a summary prospectus filed by an open-end management investment company registered under the Investment Company Act of 1940) as part of a registration statement in accordance with this section shall be deemed to be a prospectus permitted under section 10(b) of the Act (15 U.S.C. 77j(b)) for the purposes of section 5(b)(1) of the Act (15 U.S.C. 77e(b)(1)) if the form used for registration of the securities to be offered provides for the use of a summary prospectus and the following conditions are met:

* * * * *

3. Amend § 230.482 to revise the introductory text of paragraph (a) to read as follows:

§ 230.482 Advertising by an investment company as satisfying requirements of section 10.

(a) An advertisement shall be deemed to be a prospectus under section 10(b) of the Act (15 U.S.C. 77j(b)) for the purpose of section 5(b)(1) of the Act (15 U.S.C. 77e(b)(1)), unless the advertisement is a profile under § 230.498 or is excepted from the definition of prospectus by section 2(10) of the Act (15 U.S.C. 77b(10)) and related § 230.134, if:

* * * * *

4. Amend § 230.497 to revise paragraph (a) and to add paragraph (k) to read as follows:

§ 230.497 Filing of investment company prospectuses, number of copies.

(a) Five copies of every form of prospectus sent or given to any person prior to the effective date of the registration statement that varies from the form or forms of prospectus included in the registration statement filed pursuant to § 230.402(a) shall be filed as part of the registration statement not later than the date that form of prospectus is first sent or given to any person, except that:

(1) An investment company advertisement under § 230.482 shall be filed under this paragraph (but not as part of the registration statement) unless filed under paragraph (i) of this section; and

(2) A profile under § 230.498 shall be filed in accordance with paragraph (k) of this section and not as part of the registration statement.

* * * * *

(k)(1) A form of profile under § 230.498 shall not be used unless:

(i) The form of profile is filed with the Commission at least 30 days before the date it is first sent or given to any person. No additional filing is required during the 30-day period for changes (substantive or otherwise) to a form of profile filed under this paragraph if copies of the changes are submitted to the Commission under paragraph (k)(5) of this section.

(ii) A form of profile that has a substantive change from or an addition to the information in the last form of profile filed under paragraph (k)(1)(i) of this section or under this paragraph (except a profile that is changed to update quarterly return information) is filed with the Commission at least 30 days before the date it is sent or given to any person. No additional filing is required during the 30-day period for

changes (substantive or otherwise) to a form of profile filed under this paragraph if copies of the changes are submitted to the Commission under paragraph (k)(5) of this section.

(2) The form of profile filed under paragraph (k)(1)(ii) of this section can be used on the later of 30 days after the date of filing or, if the changes or additions reflect changes to a prospectus included in a post-effective amendment filed to update a registration statement under § 230.485, the date the post-effective amendment becomes effective.

(3) File with the Commission a definitive form of a profile that varies from the profile filed under paragraph (k)(1) of this section no later than the fifth business day after the date it is used.

(4) Any form of profile that does not contain substantive changes from or additions to a definitive profile that was filed under paragraph (k)(3) of this section does not need to be filed with the Commission before use if it is filed no later than the fifth business day after the date it is used. A form of profile in which the only changes are updated quarterly return information does not need to be filed with the Commission.

(5) Send two additional copies of a form of profile filed electronically under paragraph (k)(3) of this section to the Commission, in the primary form intended to be used for distribution to investors (*e.g.*, paper, electronic media), by mail or other means reasonably calculated to result in receipt by the Commission, no later than the fifth business day after the date the profile is first sent or given to any person. Send copies to the following address: Assistant Director, Office of Disclosure and Review, Division of Investment Management, U.S. Securities and Exchange Commission, 450 5th St. NW., Mail Stop 10–2, Washington, DC 20549–6009. Note prominently that the submission is made under § 230.497(k)(5) of Regulation C. If the profile is distributed primarily on the Internet, supply, in lieu of copies, the electronic address (''URL'') of the profile pages(s) in an exhibit to the electronic filing under this paragraph (k). This additional filing requirement shall expire on March 10, 1999.

5. Add § 230.498 to read as follows:

§ 230.498 Profiles for Certain Open-End Management Investment Companies.

(a) *Definitions.* A *Fund* means an open-end management investment company, or any series of the company, that has or is included in an effective registration statement on Form N–1A (§§ 274.11A and 239.15A of this chapter) and that has a current prospectus under section 10(a) of the Act (15 U.S.C. 77j(a)).

(2) A *Profile* means a prospectus that is authorized under section 10(b) of the Act (15 U.S.C. 77j(b)) and section 24(g) of the Investment Company Act (15 U.S.C. 80a–24(g)) for the purpose of section 5(b)(1) of the Act (15 U.S.C. 77e(b)(1)).

(b) *General profile requirements.* A Fund may provide a Profile to investors, which may contain an application that investors may use to purchase the Fund's shares, if:

(1) The Profile contains only the information required or permitted by paragraph (c) of this section and does not incorporate any information by reference to another document.

(2) The Fund responds within 3 business days to a request for its prospectus, annual or semi-annual report, or Statement of Additional Information by first-class mail or other means designed to assure equally prompt delivery.

Instructions to paragraph (b).

1. The Profile is intended to be a standardized summary of key information in the Fund's prospectus. Additional information is available in the prospectus and in the Fund's annual and semi-annual shareholder reports and Statement of Additional Information. Do not include cross-references to this (or other) additional information or use footnotes in the Profile, unless specifically required or permitted.

2. Provide clear and concise information in the Profile. Avoid excessive detail, technical or legal terms, complex language, and long sentences and paragraphs.

3. File the Profile with the Commission as required by § 230.497(k).

(c) *Specific profile requirements.* (1) Include on the cover page of the Profile or at the beginning of the Profile if the Profile is distributed electronically or as part of another document:

(i) The Fund's name and, at the Fund's option, the Fund's investment objectives or the type of fund offered or both;

(ii) A statement identifying the document as a ''Profile,'' without using the term ''prospectus'';

(iii) The approximate date of the Profile's first use and, if applicable, the date of the most recent updated performance information included in the Profile;

(iv) The following legend:

This Profile summarizes key information about the Fund that is included in the Fund's prospectus. If you would like more information before you invest, you may obtain the Fund's prospectus and other information about the Fund at no cost by calling _____.

Instruction to paragraph (c)(1)(iv).

Provide a toll-free (or collect) telephone number that investors can use to obtain the prospectus or other information. If applicable, the Fund may indicate that the prospectus is available on its Internet site or by E-mail request.

(2) Provide the information required by paragraphs (c)(2) (i) through (ix) of this section in the order indicated and in the same or substantially similar question-and-answer format shown:

(i) *What are the Fund's goals?* Provide the information about the Fund's investment objectives under Item 2(a) of Form N–1A.

(ii) *What are the Fund's main investment strategies?* Provide the information about the Fund's principal investment strategies under Item 2(b) of Form N–1A.

(iii) *What are the main risks of investing in the Fund?* Provide the narrative disclosure, bar chart, and table under Item 2(c) of Form N–1A. Provide the Fund's average annual returns and, if applicable, yield as of the end of the most recent calendar quarter prior to the Profile's first use and update the information as of the end of each succeeding calendar quarter as soon as practicable after the completion of the quarter.

(iv) *What are the Fund's fees and expenses?* Include the fee table under Item 3 of Form N–1A.

(v) *Who are the Fund's investment adviser and portfolio manager?* (A) Identify the Fund's investment adviser and any sub-adviser, unless the sub-adviser's responsibility is limited to routine cash management. When 3 or more sub-advisers each manage a portion of the Fund's portfolio (other than cash positions), the Fund may disclose the number of sub-advisers managing the portfolio, without identifying each sub-adviser, except that the identity of any sub-adviser that manages 40% or more of the Fund's portfolio must be disclosed.

(B) Using the Instructions to Item 6(a)(2) of Form N–1A, state the name and length of service of the person or persons employed by or associated with the Fund's investment adviser (or the Fund) who are primarily responsible for the day-to-day management of the Fund's portfolio and summarize each person's business experience for the last 5 years. When 3 or more persons each manage a portion of the Fund's portfolio, the Fund may disclose the number of persons managing the portfolio, without identifying each person, except that the information required by this paragraph must be disclosed for any person that manages 40% or more of the Fund's portfolio.

(vi) *How do I buy the Fund's shares?* Provide information about how to purchase the Fund's shares, including any minimum investment requirements. If applicable, disclose any breakpoints in or waivers of sales loads (referring to sales loads as ''sales fees (loads)').

(vii) *How do I sell the Fund's shares?* Provide information about how to redeem the Fund's shares.

(viii) *How are the Fund's distributions made and taxed?* Describe how frequently the Fund intends to make distributions and what reinvestment options (if any) are available to investors. State, as applicable, that the Fund intends to make distributions that may be taxed as ordinary income and capital gains or that the Fund intends to distribute tax-exempt income. If a Fund, as a result of its investment objectives or strategies, expects its distributions primarily to consist of ordinary income (or short-term capital gains that are taxed as ordinary income) or capital gains, provide disclosure to that effect. For a Fund that holds itself out as investing in securities generating tax-exempt income, provide, as applicable, the information required by Item 7(d)(2)(ii) of Form N–1A or a general statement to the effect that a portion of the Fund's distributions may be subject to tax.

(ix) *What other services are available from the Fund?* Summarize or list the services available to the Fund's shareholders (*e.g.*, any exchange privileges or automated information services), unless otherwise disclosed in response to paragraphs (c)(2) (i) through (viii) of this section.

(3) The Profile may include an application that a prospective investor can use to purchase the Fund's shares if the application presents with equal prominence the option to invest in the Fund or request the Fund's prospectus.

(4) A Profile of a Fund available as an investment option for participants in a defined contribution plan that meets the requirements for qualification under the Internal Revenue Code of 1986 may omit the information required by paragraphs (c)(2) (vi) through (ix) of this section. In lieu of the application permitted by paragraph (c)(3) of this section, the Fund may include the plan's enrollment form, which does not have to be filed with the Commission.

By the Commission.

Dated: February 27, 1997.

Margaret H. McFarland,

Deputy Secretary.

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BILLING CODE 8010–01–P

17 CFR Part 270

[Release No. IC–22530; File No. S7–11–97]

RIN 3235–AH11

Investment Company Names

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission is proposing a new rule under the Investment Company Act of 1940 that would require a registered investment company with a name suggesting that the company focuses on a particular type of investment (*e.g.*, an investment company that calls itself the ABC Stock Fund, the XYZ Bond Fund, or the QRS U.S. Government Fund) to invest at least 80% of its assets in the type of investment suggested by its name. Under current positions of the Commission's Division of Investment Management, these investment companies generally must invest only 65% of their assets in the types of investments suggested by their names. The proposed rule also would address names that suggest an investment company focuses its investments in a particular country or geographic region, names that indicate a company's distributions are exempt from income tax, and names that suggest a company or its shares are guaranteed or approved by the U.S. government. The new rule is intended to address certain broad categories of investment company names that are likely to mislead investors about an investment company's investments and risks.

DATES: Comments must be received on or before June 9, 1997.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC. 20549–6009. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–11–97; this file number should be included on the subject line if E-mail is used. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street, NW., Washington, DC. 20549–6009. Electronically-submitted comment letters will be posted on the Commission's Internet site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: David U. Thomas, Senior Counsel, or Elizabeth R. Krentzman, Assistant Director, (202) 942–0721, Office of Disclosure and Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, 450 5th Street, NW., Mail Stop 10–2, Washington, DC. 20549–6009.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today is proposing for comment new rule 35d–1 (17 CFR 270.35d–1) under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (the ''Investment Company Act''). The new rule would apply to all registered investment companies and would require an investment company with a name that suggests that the company focuses on a particular type of investment to invest at least 80% of its assets in the type of investment suggested by its name. In addition, the rule would apply an 80% investment requirement to investment companies with names that suggest the company focuses its investments in a particular country (*e.g.*, the ABC Japan Fund) or geographic region (*e.g.*, the ABC Latin America Fund) and investment companies with names that indicate the company's distributions are exempt from federal income tax (*e.g.*, the XYZ Tax-Exempt Fund) or exempt from both federal and state income tax (*e.g.*, the XYZ New York Tax-Exempt Fund). The rule also would prohibit an investment company from using a name that suggests that the company or its shares are guaranteed or approved by the U.S. government.

In separate companion releases, the Commission is proposing two initiatives designed to improve the disclosure provided to investors by open-end management investment companies (''funds''). First, the Commission is proposing significant amendments to the prospectus disclosure requirements of Form N–1A (17 CFR 274.11A), the registration statement used by funds.[1] These amendments seek to minimize prospectus disclosure about technical, legal, and operational matters that generally are common to all funds and to focus prospectus disclosure on essential information about a particular fund that would assist an investor in deciding whether to invest in that fund. Second, the Commission is proposing new rule 498 under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) and the Investment Company Act, which would permit an investor to buy a fund's shares based on a summary document, or ''profile,'' that contains key

[1] Investment Company Act Release No. 22528 (Feb. 27, 1997) (''Form N–1A Release'').

information about the fund.[2] Under this proposal, investors would receive the fund's prospectus upon request or with the purchase confirmation.

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I. Introduction

Section 35(d) of the Investment Company Act, as amended by the recently enacted National Securities Markets Improvement Act of 1996, prohibits a registered investment company from using a name that the Commission finds by rule to be materially deceptive or misleading.[3] Before section 35(d) was amended, the Commission was required to declare by order that a particular name was misleading and, if necessary, obtain a federal court injunction prohibiting further use of the name. In adopting amended section 35(d), Congress reaffirmed its concern that investors may focus on an investment company's name to determine the company's investments and risks, and recognized that investor protection would be improved by giving the Commission rulemaking authority to address potentially misleading investment company names.[4]

The Commission is proposing new rule 35d-1 to address certain investment company names that are likely to mislead an investor about a company's investment emphasis. The Commission believes that investors should not rely on an investment company's name as the sole source of information about a company's investments and risks.[5] An investment company's name, like any other single piece of information about an investment, cannot tell the whole story about the investment company.[6] As Congress has recognized, however, the name of an investment company may communicate a great deal to an investor.

The proposed rule would apply to all registered investment companies, including funds, closed-end investment companies, and unit investment trusts, and would require an investment company with a name that suggests a particular investment emphasis to invest in a manner consistent with its name. The rule, for example, would require an investment company with a name that suggests that the company focuses on a particular type of security (*e.g.*, an investment company that calls itself the ABC Stock Fund, the XYZ Bond Fund, or the QRS U.S. Government Fund) to invest at least 80% of its assets in the type of security indicated by its name. An investment company seeking maximum flexibility with respect to its investments would be free to select a name that does not connote a particular investment emphasis.

Under current positions of the Division of Investment Management (''Division'') an investment company with a name suggesting that the company focuses on a particular type of investment generally is required to invest only 65% of its assets in the type of investment suggested by its name.[7] Division positions with respect to investment company names have evolved over time. Division guidelines accompanying Form N–8B–1, a predecessor of Form N–1A, required a fund to invest at least 80% of its assets in the type of investment indicated by its name.[8] When the Commission adopted Form N–1A in 1983, the Division instituted the 65% investment requirement to give funds greater flexibility with respect to their names and investments.[9]

The Commission is proposing the 80% investment requirement to guard against the use of misleading investment company names and to implement Congress's intent in amending section 35(d).[10] Requiring an investment company to invest at least 80% of its assets in the type of investment suggested by its name would provide an investor greater assurance that the company's investments will be consistent with its name. The need for investment companies to invest in a manner consistent with their names would appear to have become more important in recent years as more and more investors have invested in investment companies to meet their retirement goals. These investors typically place greater emphasis on allocating their investment company holdings in well-defined types of investments, such as stocks, bonds, and money market instruments.[11] Given the substantial growth of the investment company industry over the last decade, investors face an increasingly diverse universe of investment companies to evaluate when choosing a company suitable for their investment needs.[12]

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[2] Investment Company Act Release No. 22529 (Feb. 27, 1997).

[3] 15 U.S.C. 80a-34(d); Pub. L. No. 104–290, sec. 208, 110 Stat. 3416, 3432 (1996).

[4] *See* S. Rep. No. 293, 104th Cong., 2d Sess. 8–9 (1996).

[5] *See generally* ''Investor Protection: Tips from an SEC Insider,'' Remarks by Arthur Levitt, Chairman, SEC, before the Investors'' Town Meeting at the Houstonian Hotel, Washington, D.C. (Apr. 12, 1995) (''An informed investor looks beyond the packaging of a fund, and also sees what's inside.''); ''The SEC and the Mutual Fund Industry: An Enlightened Partnership,'' Remarks by Arthur Levitt, Chairman, SEC, before the General Membership Meeting of the Investment Company Institute (''ICI'') at the Washington Hilton Hotel, Washington, D.C. (May 19, 1995) (''some fund names can leave investors with the wrong impression about [the fund's] safety.'').

[6] *See* Millman, *First pop the hood: A fund's name may tell you nothing about how it acts*, U.S. News & World Rep., Feb. 3, 1997, at 70.

[7] *See, e.g.*, Guide 1 to Form N–1A (regarding certain names used by funds). The Division also has addressed certain investment company names in various ''Letters to Registrants'' (''GCLs'').

[8] Investment Company Act Release No. 7221 (June 9, 1972) (37 FR 12790) (applying the 80% requirement with respect to a fund's assets exclusive of cash, government securities, and short-term commercial paper).

[9] Investment Company Act Release No. 13436 (Aug. 12, 1983) (48 FR 37928) (applying the 65% requirement with respect to a fund's total assets, but allowing funds to depart from the 65% requirement based on adverse market conditions).

[10] Rule 35d-1 would address misleading investment company names. In contrast, fund professionals and others may categorize investment companies based on a company's investment objectives or strategies and actual portfolio holdings. A fund investing principally in equity securities, for example, may be categorized as an aggressive stock fund or a small-capitalization fund. These categories develop over time and are used by industry and rating services such as Lipper Analytical Services, Inc. and Morningstar, Inc. Morningstar, Inc., for example, currently is revising its investment company classification system to classify a company by its portfolio holdings over a 3-year period (or life of the fund, if shorter). Morningstar, *Morningstar Introduces New Fund Categories* (Oct. 29, 1996) (press rel.).

[11] *See, e.g.*, Vickers, *A Price of Success: An Unbalanced Portfolio*, N.Y. Times, Jan. 12, 1997, at F6; Glassman, *With New Year, Stock Up a 401(k) for the Long Term*, Wash. Post, Jan. 1, 1997, at C13. The amount of retirement assets invested in funds increased 145% between 1992 and 1995, with these assets totalling $1.01 trillion at the end of 1995. ICI, Mutual Fund Retirement Assets (Dec. 6, 1996) (ICI News No. ICI–96–98). The ICI estimates that, in 1995, 84% of fund shareholders invested for retirement purposes. *Id.*

[12] According to Division estimates based on data from the ICI and Lipper Analytical Services, between September 1985 and November 1996, investment company assets increased from $591 billion to $4.0 trillion and the number of

The proposed 80% investment requirement could help reduce confusion when an investor selects an investment company for specific investment needs and asset allocation goals.

The proposed rule would address certain broad categories of investment company names that, in the Commission's view, are likely to mislead investors about a company's investments and risks. The Division would continue to evaluate investment company names not covered by proposed rule 35d–1 (*e.g.*, a name that includes words, such as ''international'' or ''global,'' that a reasonable investor may conclude suggest more than one investment focus). In determining whether a particular name is misleading, the Division would consider whether the name would lead a reasonable investor to conclude that the company invests in a manner that is inconsistent with the company's intended investments or the risks of those investments.

II. Discussion

A. General

1. Names Indicating an Investment Emphasis in Certain Securities or Industries

Proposed rule 35d–1 would require an investment company with a name that suggests that the company focuses its investments in a particular type of security (*e.g.*, the ABC Stock Fund or XYZ Bond Fund) or in securities of issuers in a particular industry (*e.g.*, the ABC Utilities Fund or the XYZ Health Care Fund) to invest at least 80% of its assets in the indicated investment.[13] The 80% requirement would allow an investment company to maintain up to 20% of its assets in other investments. In the case of funds, these assets, for example, could include cash and cash equivalents that could be used to meet redemption requests.

The proposed rule would require the 80% investment requirement to be a fundamental policy of the investment company (*i.e.*, a policy that may not be changed without shareholder approval).[14] Consistent with other requirements under the Investment Company Act, the requirement to adopt the 80% investment requirement as a fundamental policy would prevent a company from changing its name and its investment emphasis without the consent of shareholders.[15] The Commission requests comment on the proposed 80% investment requirement and whether the 80% requirement should be a fundamental policy.

Under the proposed rule, an investment company that includes the words ''Treasury'' or ''government'' in its name (*e.g.*, the ABC U.S. Treasury Fund or the XYZ U.S. Government Fund) would be required to invest, as applicable, at least 80% of its assets in U.S. Treasury securities or U.S. government securities.[16] The Commission requests comment whether an investor may infer from a name that includes the words ''Treasury'' that the investment company invests exclusively in obligations backed by the full faith and credit of the U.S. government. If so, should the proposed rule require these investment companies to invest exclusively in U.S. Treasury obligations?

Under the proposed rule, an investment company with the word ''government'' in its name could satisfy the 80% investment requirement by investing in government securities, which include many types of instruments ranging, for example, from U.S. Treasury bonds to derivative securities, such as Government National Mortgage Association collateralized mortgage obligations. Investors may not anticipate the extent to which the net asset value of an investment company that invests in government securities may increase or decrease in response to changes in interest rates. In 1994, certain funds with the word ''government'' in their names declined sharply in value in response to interest rate changes.[17] The Commission requests comment whether, to address the degree of interest-rate sensitivity of the shares of these companies, the rule should restrict the types of government securities that may be used to satisfy the 80% requirement and, if so, what restrictions would be appropriate. For example, the rule could require an investment company with a name that includes the word ''government'' to invest at least 80% of its assets in U.S. Treasury securities and other comparable government instruments. This approach, however, could have the practical effect of subjecting investment companies with the words ''government'' and ''Treasury'' in their names to substantially the same 80% investment requirement and eliminate any differences among these funds. In addition, these types of restrictions would create a separate, narrower definition of ''government securities'' for the purposes of the rule than that used in the marketplace. Commenters favoring a limitation on the types of instruments that could be used to meet the 80% requirement should suggest specific limitations and discuss why those limitations would be appropriate.[18]

2. Names Indicating an Investment Emphasis in Certain Countries or Geographic Regions

The proposed rule would address investment companies with names that suggest that they focus their investments in a particular country (*e.g.*, the ABC Japan Fund) or in a particular geographic region (*e.g.*, the XYZ Latin America Fund) by requiring these companies to meet a two-part 80% investment requirement.[19] First, these companies would be required to have a fundamental policy to invest, as applicable, at least 80% of their assets in securities of issuers that are tied economically to the particular country or geographic region indicated by their names. Consistent with this requirement, a company also would be required to invest in securities that meet any one of the following criteria: (i) Securities of issuers that are organized under the laws of the country or of a

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investment companies (including the individual series of funds) increased from 9,200 to 24,661.

[13] Proposed rule 35d–1(a)(2). A fund that uses a name suggesting that it is a money market fund would continue to be subject to the maturity, quality, and diversification requirements of rule 2a–7(b) under the Investment Company Act (17 CFR 270.2a–7(b)).

[14] *See* section 8(b)(3) of the Investment Company Act, 15 U.S.C. 80a–8(b)(3) (regarding policies deemed fundamental by an investment company), and section 13(a)(3) of the Investment Company Act, 15 U.S.C. 80a–13(a)(3) (requiring shareholder approval to change a policy deemed fundamental under section 8(b)(3)). Under current Division positions, only investment companies with names suggesting that their distributions are exempt from tax are required to adopt fundamental policies with respect to their investments or distributions. *See* Guide 1 to Form N–1A (regarding tax-exempt funds).

[15] *See* section 13(a) of the Investment Company Act (requiring, among other things, an investment company to obtain shareholder approval to change its status from a diversified company to a nondiversified company). *See also infra* note 49.

[16] *See* section 2(a)(16) of the Investment Company Act (15 U.S.C. 80a–2(a)(16)) (defining government securities as those issued or guaranteed by the U.S. government or any U.S. government agency or instrumentality). The requirement to invest, as applicable, in U.S. Treasury securities or U.S. government securities would apply only to investment companies with names that connote investments in U.S. obligations. An investment company with a name that suggests the company invests in government obligations other than those of the United States (*e.g.*, the ABC French Government Fund) would be required to invest at least 80% of its assets in the type of government securities by its name.

[17] *See Mutual Funds*, Consumer Reports, June 1995, at 415 (a fund with the words ''government income'' in its name that lost 28% in 1994 ''seemed to imply that shareholders would be investing in safe government bonds that produce income').

[18] *See also infra* ''Names Suggesting Guarantee or Approval by the U.S. Government.''

[19] Proposed rule 35d–1(a)(3).

country within the geographic region suggested by the company's name or that maintain their principal place of business in that country or region; (ii) securities that are traded principally in the country or region suggested by the company's name; or (iii) securities of issuers that, during the issuer's most recent fiscal year, derived at least 50% of their revenues or profits from goods produced or sold, investments made, or services performed in the country or region suggested by the company's name or that have at least 50% of their assets in that country or region. Substantially the same 3 criteria have been used to date by the Division to determine whether names of investment companies that focus their investments in particular countries or geographic regions are consistent with section 35(d).[20] Since these criteria are relatively broad, the proposed rule would impose the general requirement that a company's investments be tied economically to the country or region indicated by its name.

The Commission requests comment on the proposed approach. In particular, the Commission requests comment on using specific criteria alone to determine whether a company's investments are consistent with its name and, if so, whether the proposed 3 criteria appropriately describe investments in securities of a particular country or region.[21] Alternatively, the Commission requests comment whether the rule should impose only the general requirement that a company invest at least 80% of its assets in securities of issuers that are tied economically to the country or geographic region indicated by the company's name.[22] This approach may give a company the flexibility to invest in additional types of securities that are not addressed by the 3 proposed (or other specific) criteria, but expose the company's assets to the economic fortunes and risks of the country or geographic region indicated by its name.[23] The Commission requests comment whether this result would be appropriate.

Tax-Exempt Investment Companies

The proposed rule would codify current Division positions applicable to an investment company with a name that suggests that the company's distributions are not subject to income tax. In particular, rule 35d-1 would require a company that uses a name suggesting that its distributions are exempt from federal income tax or from both federal and state income taxes to adopt a fundamental policy: (i) To invest at least 80% of its assets in securities the income from which is exempt, as applicable, from federal income tax or from both federal and state income tax; or (ii) to invest its assets so that at least 80% of the income that it distributes will be exempt, as applicable, from federal income tax or from both federal and state income tax.[24] Consistent with current Division positions, the proposed requirements would apply to a company's investments or distributions that are exempt from federal income tax under both the regular tax rules and the alternative minimum tax rules.[25]

Applying the 80% Investment Requirement

The proposed 80% investment requirement would apply at the time a company invests its assets.[26] This approach would be consistent with other investment requirements under the Investment Company Act.[27] Under the proposed approach, for example, an investment company subject to the 80% investment requirement would not have to sell portfolio holdings that have increased in value.[28] The proposed rule would require an investment company that no longer meets the 80% investment requirement (*e.g.*, as a result of changes in the value of its portfolio holdings or other circumstances beyond its control) to make future investments in a manner that would bring the company into compliance with the 80% requirement. The Commission requests comment on the proposed approach.

The proposed 80% investment requirement would be based on a company's net assets plus any borrowings that are senior securities under section 18 of the Investment Company Act.[29] Division positions that require an investment company to invest at least 65% of its assets in the type of investment suggested by its name apply the 65% requirement based on a company's total assets.[30] Total assets may include non-investment assets (such as receivables for shares sold or expense reimbursements) and exclude liabilities that reduce the amount of a company's investments. Certain types of routine transactions, such as unsettled securities transactions and securities loans, may increase a company's total assets because total assets do not reflect certain liabilities.[31] These transactions have no net effect on a company's portfolio investments and may result in a company failing to satisfy an 80% investment requirement based on total assets, even though, in effect, 80% of the company's portfolio holdings would be invested in a manner consistent with the company's name. Basing the 80% investment requirement on net assets rather than total assets is intended to reflect more closely a company's portfolio investments.

Net assets do not include liabilities such as a company's borrowings, if any. The proposed rule would use net assets plus the amount of any borrowings that are senior securities. This approach seeks to prevent a company from circumventing the 80% investment requirement by investing borrowed funds in securities that are not

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[20] Letter to Registrants at II.A (Feb. 22, 1993) (using substantially the same 3 criteria, but indicating that the Division would consider other criteria).

[21] *See* ''*The Scope of the US Mutual Fund Industry: Its Regulation and Industry Trends,*'' Remarks by Isaac C. Hunt, Jr., Commissioner, SEC, before the Business Roundtable on ''The Development of the Russian Mutual (Unit) Fund Industry and Related Investment Opportunities'' at the General Consulate of the Russian Federation, New York, New York (Sept. 20, 1996) (discussing St. Petersburg Long Distance Telephone company, which is organized in Canada and whose securities are traded outside of Russia). *See also, e.g.*, rule 3b–4 under the Securities Exchange Act of 1934 (17 CFR 240.3b–4) (defining a ''foreign issuer').

[22] Under this approach, an investment company would describe in its prospectus the specific criteria that it uses to select investments that meet the general standard.

[23] For example, an investment company may seek to replicate the currency exposure associated with investing in a particular country by investing in securities denominated in the currencies of other countries.

[24] Proposed rule 35d–1(a)(4).

[25] Letter from Mary Joan Hoene, Deputy Director, Division of Investment Management, SEC, to Matthew P. Fink, Senior Vice President and General Counsel, ICI (Nov. 3, 1987).

[26] Proposed rule 35d–1(b)(1).

[27] *See* section 5(c) of the Investment Company Act (15 U.S.C. 80a–5(c)) (providing that a diversified investment company under section 5(b)(1) of the Act will not lose its status as a diversified company because of changes in the value of its investment since the time of purchase).

[28] Similarly, the proposed approach would enable a fund, pending investment of its assets, to meet the 80% investment requirement despite an influx of cash from new investors. Guide 1 to Form N–1A, in contrast, requires a fund ''to have invested'' at least 80% of its assets in a manner consistent with its name, which could suggest that a fund would be required to sell portfolio securities in order to *maintain* 80% of its assets in the type of investment suggested by its name.

[29] 15 U.S.C. 80a–18. *See* proposed rule 35d–1(b)(2)(ii) (defining assets for the purposes of the 80% investment requirement).

[30] *See* Guide 1 to Form N–1A (also applying an 80% investment requirement for tax-exempt funds based on a fund's *net* assets).

[31] For example, when a company sells a security for settlement in 3 days and simultaneously commits the sale proceeds to purchase another security, the company's total assets would include as receivables amounts for the security sold and the security purchased, although, during the 3-day settlement period, the company's total assets would not reflect the liability for the price of the securities that the company is obligated to purchase. Similarly, when a company lends its securities, total assets would include a receivable for the security loaned and the collateral for the loan, but not the corresponding payable for the loan.

consistent with the company's name.[32] The Commission requests comment on the proposed approach and whether there are other transactions that, like borrowings, could increase the amount of assets that a company could invest and should be added to net assets. Alternatively, the Commission requests comment whether using total assets excluding certain transactions, such as unsettled securities transactions and securities loans, would be a more effective basis for the 80% requirement and, if so, what transactions should be excluded from total assets.

Consistent with current Division positions, the proposed rule would contemplate that an investment company may take a ''temporary defensive position'' to avoid losses in response to adverse market, economic, political, or other conditions.[33] When an investment company assumes a temporary defensive position, the company would be permitted to depart from the 80% requirement and invest in other securities. The Commission requests comment on the proposed approach. In particular, the Commission requests comment whether the Commission should provide specific guidance on when an investment company could appropriately assume a temporary defensive position.[34] Commenters favoring this approach should consider whether the rule should establish specific time periods during which a company would be permitted to take a temporary defensive position. Alternatively, the Commission requests comment whether the rule should give investment companies greater flexibility to assume temporary defensive positions. For example, should an investment company simply disclose the circumstances under which, and the potential length of time during which, the company may assume a temporary defensive position and depart from the 80% investment requirement?

The Commission also requests comment whether certain investment companies may require more flexibility than others in meeting the 80% investment requirement. For example, an investment company with a name that suggests the company invests in securities associated with a developing country may need the flexibility to invest significant portions of its assets in other securities pending the availability of suitable investments in the developing country indicated by its name. The Commission requests comment whether and how these or other circumstances should be addressed.

B. Names Suggesting Guarantee or Approval by the U.S. Government

Consistent with the requirements of section 35(a) of the Investment Company Act, the proposed rule would prohibit an investment company from using a name that suggests that the company or its shares are guaranteed or approved by the U.S. government or any U.S. government agency or instrumentality.[35] The proposed rule also would codify a Division position that prohibits an investment company from using a name that includes the words ''guaranteed'' or ''insured'' or similar terms in conjunction with ''United States'' or ''U.S. government.'' The Division adopted this position to address concerns that names with these terms may lead investors to conclude erroneously that the value of an investment company's shares is guaranteed or insured by the U.S. government.[36]

U.S. government securities differ among themselves with respect to the amount of credit support provided by the U.S. government. Including the word ''guarantee'' or similar terms in an investment company's name could be used to address the degree of credit risk associated with the types of government securities in which a particular company invests. For example, while U.S. Treasury bonds are supported by the full faith and credit of the United States, government securities issued by the Federal National Mortgage Association (''Fannie Mae'') are supported by Fannie Mae's ability to borrow from the U.S. Treasury. The proposed rule, however, would prohibit a company from using a name such as the ''ABC Fund for Investing in U.S. Guaranteed Assets,'' even though the company invests at least 80% of its assets in government obligations that are, in fact, guaranteed as to payment of principal and interest by the full faith and credit of the U.S. government. The Commission requests comment whether the proposed prohibition is appropriate. In addition, since the fund industry distinguishes between Treasury and other government funds and investors may understand the differences between these funds, the Commission requests comment whether a reasonable investor would understand that using terms such as ''guaranteed'' or ''insured'' in conjunction with the words ''U.S. government'' reflect the credit risk of a company's investments. Alternatively, would a reasonable investor be misled into believing that names using these terms mean that an investment in the company is guaranteed or insured by the U.S. government from any risk of loss, including the risk that the value of the company's shares may decrease in response to interest rate changes?

C. Other Investment Company Names

In General

The proposed rule would not codify Division positions with respect to certain investment company names. The Division, for example, has provided guidance in the past about the use of a name that includes words such as ''balanced,'' ''index,'' ''small, mid, or large capitalization,'' ''international,''

[32] Section 18 of the Investment Company Act restricts the issuance of senior securities, which include borrowings (except bank borrowings that satisfy certain asset coverage conditions). Investment companies may borrow without being deemed to have created a senior security by establishing a segregated account with liquid assets that collateralize 100% of the market value of the borrowing. *See* Investment Company Act Release No. 10666 (Apr. 18, 1979) (44 FR 25128); Merrill Lynch Asset Management, L.P. (pub. avail. July 2, 1996). For purposes of the rule, net assets would include only those borrowings that are senior securities (*i.e.*, any borrowings that are not fully collateralized by amounts maintained in a segregated account). By virtue of segregating assets to collateralize the borrowing, an investment company should not be able to circumvent the 80% requirement because the amount of company's assets available for investment would not be increased.

[33] Proposed rule 35d–1(b)(3). *See* Letter to Registrants at II.E (Feb. 25, 1994) (''1994 GCL'). See also Form N–1A Release, *supra* note (proposing to require a fund to disclose, if applicable, certain information in its prospectus about the possibility of taking temporary defensive positions).

[34] Many investment companies have the flexibility to assume temporary defensive positions and depart from investment policies unrelated to their names. *See* 1994 GCL, *supra* note (noting that investment companies may depart from a policy to concentrate in a particular industry or group of industries to avoid losses in response to adverse market, economic, political, or other conditions).

[35] Proposed rule 35d–1(a)(1). *See* section 35(a) of the Investment Company Act [15 U.S.C. 80a–34(a)] (prohibiting an investment company from representing or implying in any manner that the company or its shares are guaranteed or approved by the U.S. government).

[36] *See* Letter from William R. McLucas, Director, Division of Enforcement, and Gene A. Gohlke, Acting Director, Division of Investment Management, SEC, to Registrants (Oct. 25, 1990). A similar concern may be raised when an investment company has a name that is the same as or similar to the name of a bank that advises the company or through which the company's shares are sold. The Division has taken the position that, absent disclosure informing investors that the investment company is not federally insured, these names are misleading because an investor is likely to believe that an investment in the company is insured by the Federal Deposit Insurance Corporation or otherwise protected against loss. *See* Letter to Registrants from Barbara J. Green, Deputy Director, Division of Investment Management, SEC (May 13, 1993). The proposed amendments to Form N–1A would continue to require a fund with a name that is the same as or similar to a bank's name to disclose that it is not federally insured. *See* Form N–1A Release, *supra* note 1.

and ''global.'' [37] The Commission believes that a reasonable investor could conclude that these names suggest more than one investment focus. For example, while an investment company with a name that includes the words ''international'' or ''global'' generally suggests that the company invests in more than one country, these terms may describe a number of investment companies that have significantly different investment portfolios. Among other things, the number of countries in which an ''international'' or ''global'' investment company may invest at any one time may appropriately differ from company to company.[38]

The Division would continue to give interpretive advice with respect to investment company names not covered by the proposed rule.[39] In determining whether a particular name is misleading, the Division would consider whether the name would lead a reasonable investor to conclude that the company invests in a manner that is inconsistent with the company's intended investments or the risks of those investments.[40]

[37] *See* Guide 4 to Form N–1A (funds that use the word ''balanced'' in their names); Letter to Registrants at II.A (Jan. 17, 1992) (investment companies that include the word ''index'' in their names); 1994 GCL, *supra* note 33, at II.D (investment companies with names that include the terms ''small, mid, or large capitalization''). The Commission does not license the use of a particular investment company name, although the Division has considered and would continue to address whether the use of a particular name would be misleading because it is the same as or similar to the name of an existing registered investment company. *See* Guide 1 to Form N–1A.

[38] In the past, the Division distinguished ''global'' and ''international'' investment companies by suggesting that an investment company with ''global'' in its name invest in securities of at least 3 different countries (which may *include* the United States) and that an investment company with ''international'' in its name invest in securities of at least 3 countries *outside* the United States. Letter to Registrants at II.A.2 (Jan. 3, 1991). The Division no longer distinguishes the terms ''global'' and ''international.''

[39] As a general matter, an investment company should define the terms used in its name in discussing its investment objectives and strategies in the prospectus. *See* 1994 GCL, *supra* note 33, at II.D (using this approach for investment companies that include the words ''small, mid, and large capitalization'' in their names).

[40] 3See In re Alliance North Am. Gov't Income Trust, Inc. Securities Litigation, No. 95 Civ. 0330 (LLM), 1996 U.S. Dist. LEXIS 14209, at *8 (S.D.N.Y. Sept. 27, 1996); The Private Investment Fund for Governmental Personnel, Inc., 37 S.E.C. 484, 487–88 (1957). The 80% investment requirement generally would apply to a company's investment focus as disclosed in the company's prospectus. The Commission, however, recognizes that the 80% investment requirement would not be appropriate in all cases (*e.g.*, with respect to an investment company that uses the word ''balanced'' in its name).

In connection with the proposed amendments to Form N–1A, information about the organization and operations of investment companies and Division interpretive positions is proposed to be incorporated in a new ''Investment Company Registration Package,'' which would be prepared by the Division. *See* Form N–1A Release, *supra* note 1. The Investment Company Registration Package would include general guidance about avoiding the use of a name that is the same as or similar to the name of another investment company and about names that a reasonable investor may conclude suggest more than one investment focus including, for example, use of names that include the terms ''small, mid, or large capitalization.''

2. Names and Average Weighted Portfolio Maturity and Duration

Investment companies investing in debt obligations often seek to distinguish themselves by limiting the maturity of the instruments they hold. These investment companies may call themselves, for example, ''short-term,'' ''intermediate-term,'' or ''long-term'' bond or debt funds.[41] The Division has required investment companies with these types of names to have average weighted portfolio maturities of specified lengths. The Division, for example, has required an investment company that includes the words ''short-term,'' ''intermediate-term,'' or ''long-term'' in its name to have a dollar-weighted average maturity of, respectively, no more than 3 years, more than 3 years but less than 10 years, or more than 10 years.[42] The Division no longer intends to use these criteria because it believes a reasonable investor would not necessarily expect that investment companies with these names would be limited in this manner.[43] In addition, the Division and Commission believe that the average weighted maturity of an investment company's portfolio securities may not accurately reflect the sensitivity of the company's share prices to changes in interest rates.[44]

In view of the shortcomings associated with analyzing interest rate volatility based on average weighted maturity, investment companies and investment professionals increasingly evaluate bond portfolios based on ''duration,'' which reflects the sensitivity of an investment company's returns to changes in interest rates.[45] In a concept release on improving risk disclosure, the Commission requested comment whether, if an investment company's name or investment objective refers to maturity, the maturity of the company's investments should be required to be consistent with the duration of the company's portfolio.[46] A number of commenters supported this approach, and the Division is in the process of developing recommendations relating to duration and the maturity of an investment company's investments. As part of its consideration of this issue, the Division requested the Investment Company Institute (''ICI'') to consider various methods of calculating duration and asked the ICI to report its findings.[47] In response, the ICI formed a committee to consider this issue and the committee has agreed to inform the Division of its findings. As the Division continues to consider this issue, the Commission requests further comment whether the maturity of a company's portfolio suggested by the company's name should be consistent with the portfolio's duration.[48] The Commission requests specific comment on an appropriate method or methods to calculate portfolio duration.

[41] The term ''bond,'' by itself, does not imply that the security has a particular maturity. *See also* 1994 GCL, *supra* note, 33, at III.A (indicating that a fund should describe in its prospectus what it considers to be a ''bond').

[42] *See* Investment Company Act Release No. 15612 (Mar. 9, 1987) [52 FR 8268, 8301] (proposing to codify these positions in a guideline).

[43] As in the case of other investment company names, the Division would address these terms on a case-by-case basis in light of the disclosure provided by the investment company.

[44] In 1994, some investors did not anticipate how certain investment companies would perform when interest rates declined over a relatively short period of time. *See, e.g.*, Antilla, *A New Concept in Fund Ads: Truth*, N.Y. Times, July 10, 1994, at C13 (regarding the performance of certain short-term bond funds).

[45] *See, e.g.*, Rekenthaler, *Duration Arrives*, Morningstar Mutual Funds 1–2 (Jan. 21, 1994).

[46] Investment Company Act Release No. 20974 (Mar. 29, 1995) (60 FR 17172, 17175–76).

[47] Letter to Paul Schott Stevens, General Counsel, ICI, from Barry P. Barbash, Director, Division of Investment Management, SEC (Feb. 15, 1996) (File No. S7–10–95); Letter to Barry P. Barbash, Director, Division of Investment Management, SEC, from Paul Schott Stevens, Senior Vice President and General Counsel, ICI (Mar. 11, 1996) (File No. S7–10–95). *See also* Letter to Barry P. Barbash, Director, Division of Investment Management, SEC, from Craig Tyle, Vice President and Senior Counsel, ICI (Dec. 17, 1996) (enclosing preliminary recommendations relating to a standardized methodology for calculating portfolio duration) (File No. S7–10–95).

[48] Pending further action on this issue, the Division would consider, on a case-by-case basis, an investment company's use of duration in connection with the maturity suggested by the company's name.

[49] Certain investment companies have fundamental policies to invest at least 65% of their assets in the type of investments suggested by their

D. Effective Date

The Commission proposes to allow an investment company up to one year from the effective date of the proposed rule to comply with the rule's requirements. A one-year period is intended to give an investment company sufficient time to make any necessary adjustments to its portfolio holdings to comply with proposed rule 35d–1 or, if the company does not wish to be bound by the requirements of the new rule, to change its name.[49] The

Commission requests comment on the proposed transition period.

III. General Request for Comments

The Commission requests that any interested persons submit comments on proposed rule 35d–1, suggest additional changes (including changes to related rules that the Commission is not proposing to amend), or submit comments on other matters that might affect the proposed rule. Commenters suggesting alternative approaches are encouraged to submit proposed rule or form text. For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), the Commission also is requesting information regarding the potential impact of the proposed rule on the economy on an annual basis. Commenters should provide empirical data to support their views.

IV. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis (''Analysis'') in accordance with 5 U.S.C. 603 regarding proposed rule 35d–1. The Analysis explains that the proposed rule would require a registered investment company with a name suggesting that the company focuses on a particular type of investment to invest at least 80% of its assets in the type of investment suggested by its name. The Analysis also explains that the proposed rule is intended to address investment company names that are likely to mislead investors about an investment company's investments and risks.

The Analysis discusses the impact of the proposed rule on small entities, which are defined, for the purposes of the Investment Company Act, as investment companies with net assets of $50 million or less as of the end of the most recent fiscal year (17 CFR 270.0–10). The Commission estimates that approximately 3,846 investment companies would be subject to the proposed rule. Of these, approximately, 771 (20%) are investment companies that would be small entities. The Commission believes that there are no other duplicative, overlapping, or conflicting federal rules.

Only those investment companies that have names suggesting a particular investment emphasis would be required to comply with the proposal. To comply with the proposed rule, an investment company with a name that suggests the company focuses on a particular type of investment would have to adopt a fundamental policy to invest at least 80% of its assets in the type of investment suggested by its name. The 80% requirement would allow an investment company to maintain up to 20% of its assets in other investments. An investment company seeking maximum flexibility with respect to its investments would be free to use a name that does not connote a particular investment emphasis.

As stated in the Analysis, the Commission considered several alternatives to proposed rule 35d–1 including, among others, establishing different compliance or reporting requirements for small entities or exempting them from all or part of the proposed rule. Because an investment company could choose to use a name that does not suggest a particular investment, the Commission believes that the proposed rule would not impose additional burdens on small entities and that separate treatment for small entities would be inconsistent with the protection of investors.

The Commission encourages the submission of comment on the Analysis, including specific comment on (i) the number of small entities that would be affected by the proposed rule and (ii) the discussion of the impact of the rule on small entities. Comments will be considered in the preparation of the Final Regulatory Flexibility Analysis if the proposed rule is adopted. A copy of the Analysis may be obtained from John M. Ganley, Senior Counsel, Securities and Exchange Commission, 450 5th Street, NW., Mail Stop 10–2, Washington, DC 20549–6009.

V. Statutory Authority

The Commission is proposing rule 35d–1 under sections 5, 7, 8, 10, and 19(a) of the Securities Act (15 U.S.C. 77e, 77g, 77h, 77j, and 77s(a)) and sections 8, 30, 35, and 38 of the Investment Company Act (15 U.S.C. 80a–8, 80a–29, 80a–34, and 80a–37). The authority citations for the rule precede the text of the amendments.

VI. Text of Proposed Rule

List of Subjects in 17 CFR Part 270

Investment companies, Securities.

For the reasons set out in the preamble, the Commission is proposing to amend Chapter II, Title 17 of the Code of Federal Regulations as follows:

PART 270—GENERAL RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

The authority citation for part 270 continues to read in part as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–37, and 80a–39 unless otherwise noted;

* * * * *

2. Add § 270.35d–1 to read as follows:

§ 270.35d–1 Investment company names.

(a) For purposes of section 35(d) of the Act (15 U.S.C. 80a–34(d)), a materially deceptive and misleading name of a Fund includes:

(1) *Names suggesting guarantee or approval by the U.S. government.* A name suggesting that the Fund or the securities issued by it are guaranteed, sponsored, recommended, or approved by the U.S. government or any U.S. government agency or instrumentality, including any name that uses the words ''guaranteed'' or ''insured'' or similar terms in conjunction with the words ''United States'' or ''U.S. government.''

(2) *Names suggesting investment in certain securities or industries.* A name suggesting that the Fund focuses its investments in a particular type of security or securities or in securities of issuers in a particular industry or group of industries, unless the Fund has adopted a fundamental policy under section 8(b)(3) of the Act (15 U.S.C. 80–8(b)(3)) to invest, as applicable, at least 80% of the value of its Assets in the particular securities or in securities of issuers in the particular industry or industries suggested by its name.

(3) *Names suggesting investment in certain countries or geographic regions.* A name suggesting that the Fund focuses its investments in a particular country or geographic region, unless the Fund has adopted a fundamental policy under section 8(b)(3) of the Act to invest, as applicable, at least 80% of the value of its Assets in securities of issuers that are tied economically to the particular country or geographic region suggested by its name. In meeting this requirement, a Fund must invest, as applicable, in:

(i) Securities of issuers that are organized under the laws of the country or of a country within the geographic region suggested by the Fund's name or that maintain their principal place of business in that country or region;

(ii) Securities that are traded principally in the country or region suggested by the Fund's name; or

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names. The Investment Company Act does not require shareholder approval to adopt a new fundamental policy. *See* section 13(a)(3) of the Investment Company Act (requiring shareholder approval to *deviate* from a fundamental policy). An investment company that has a fundamental policy to invest *at least* 65% of their assets in the type of investment suggested by its name generally would be expected to meet the higher 80% investment requirement. A company would decide, based on its individual circumstances, whether it is necessary to seek shareholder approval to change its investment policy.

(iii) Securities of issuers that, during the issuer's most recent fiscal year, derived at least 50% of their revenues or profits from goods produced or sold, investments made, or services performed in the country or region suggested by the Fund's name or that have at least 50% of their assets in that country or region.

(4) *Tax-exempt Funds.* A name suggesting that the Fund's distributions are exempt from federal income tax or from both federal and state income tax, unless the Fund has adopted a fundamental policy under section 8(b)(3) of the Act:

(i) To invest at least 80% of the value of its Assets in securities the income from which is exempt, as applicable, from federal income tax or from both federal and state income tax; or

(ii) To invest its Assets so that at least 80% of the income that it distributes will be exempt, as applicable, from federal income tax or from both federal and state income tax.

(b)(1) The requirements of paragraphs (a)(2) through (4) of this section apply at the time a Fund invests its Assets. If, subsequent to an investment, these requirements are no longer met, the Fund's future investments must be made in a manner that will bring the Fund into compliance with those paragraphs.

(2) For purposes of this section:

(i) *Fund* means a registered investment company and any series of the investment company.

(ii) *Assets* means net assets plus the amount of any borrowings of the Fund that are senior securities under section 18 of the Act (15 U.S.C. 80a–18).

(3) Notwithstanding the requirements of paragraphs (a)(2) through (4) of this section, a Fund may, to the extent permitted by its fundamental policies, make other investments to avoid losses while assuming a temporary defensive position in response to adverse market, economic, political, or other conditions.

Dated: February 27, 1997.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

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Federal Register

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March 10, 1997

Part III

Department of Health and Human Services

Administration for Children and Families

Runaway and Homeless Youth Program (RHYP): Fiscal Year (FY) 1997 Final Program Priorities, Availability of Financial Assistance for Fiscal Year 1997, and Request for Applications for FY 1997 and FY 1998; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. ACF/ACYF/RHYP 97–1]

Runaway and Homeless Youth Program (RHYP): Fiscal Year (FY) 1997 Final Program Priorities, Availability of Financial Assistance for Fiscal Year 1997, and Request for Applications for FY 1997 and FY 1998

AGENCY: Family and Youth Services Bureau (FYSB), Administration on Children, Youth and Families (ACYF), ACF, HHS.

ACTION: Notice of Fiscal Year 1997 Final Runaway and Homeless Youth (RHY) Program Priorities, announcement of availability of financial assistance, and request for applications for the FY 1997 Basic Center Program for Runaway and Homeless Youth (BCP), FY 1997 Street Outreach Program (SOP), and the Transitional Living Program for Homeless Youth (TLP) for FY 1998.

SUMMARY: The Family and Youth Services Bureau of the Administration on Children, Youth and Families is publishing final program priorities and announcing the availability of funds for:

1. The Basic Center Program for Runaway and Homeless Youth. The purpose of the Basic Center Program is to provide financial assistance to establish or strengthen locally-controlled centers that address the immediate needs (outreach, temporary shelter, food, clothing, counseling, aftercare, and related services) of runaway and homeless youth and their families.

2. The Street Outreach Program. The purpose of the Street Outreach Program is to provide financial assistance to prevent sexual abuse and exploitation of runaway, homeless and street youth. Street-based outreach and education services, including treatment, counseling, and the provision of information and referral assistance are allowable services under this program.

3. Transitional Living Program for Homeless Youth. The overall purpose of the Transitional Living Program for Homeless Youth is to support programs which assist older homeless youth in making a successful transition to self-sufficient living and to prevent long-term dependency on social services.

DATES: The deadlines for RECEIPT by DHHS of applications for new grants under this announcement are as follows:

Programs	Closing dates
BCP	May 2, 1997.
SOP	May 16, 1997.
TLP	May 30, 1997.

ADDRESSES: Mailed applications shall be considered as meeting an announced deadline if they are received on or before the DEADLINE date and time at the: U.S. Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Mail Stop 6C–462, Washington, DC 20447. Attention: Basic Center Program for Runaway and Homeless Youth, Street Outreach Program or Transitional Living Program for Homeless Youth.

Applicants are responsible for mailing applications well in advance, when using all mail services, to ensure that the applications are received on or before the deadline time and date. Applications received after 4:30 p.m. (Eastern Time Zone) on the closing date will be classified as late. Postmarks and other similar documents do not establish receipt of an application.

Applications handcarried by applicants, applicant couriers, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the receipt date, between the hours of 8 a.m. and 4:30 p.m. (EST), at the: U.S. Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, ACF Mailroom, 2nd Floor Loading Dock, Aerospace Center, 901 D Street, SW., Washington, DC. 20024 between Monday and Friday (excluding Federal Holidays). (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.) ACF cannot accommodate transmission of applications by fax. Therefore, applications faxed to ACF will not be accepted regardless of date or time of submission and time of receipt. Envelopes containing applications must clearly indicate the specific program that the application is addressing: Basic Center Program (BCP), Street Outreach Program (SOP) or Transitional Living Program for Homeless Youth (TLP).

FOR FURTHER INFORMATION CONTACT: Administration on Children, Youth and Families, Family and Youth Services Bureau, PO Box 1182, Washington, DC 20013; Telephone: 1–800–351–2293. You may also locate a copy of this program announcement on the FYSB website at http://www.acf.dhhs.gov/programs/FYSB on the FYSB homepage under Policy and Announcements.

SUPPLEMENTARY INFORMATION: Grant awards of FY 1997 funds will be made by September 30, 1997 for the Basic Center and the Street Outreach Program. Subject to the availability of resources in FY 1998 and the number of acceptable applications received as a result of this program announcement, the Federal government may elect to select recipients for new FY 1998 SOP grant awards out of the pool of Street Outreach Program applications submitted under this program announcement. Transitional Living Program awards under this announcement will be made after October 1, 1997 with FY 1998 funds.

This single announcement for the three programs has been developed in order to save the field and the Federal government significant resources. Also, the single announcement provides the field with the application due dates for each program, providing interested agencies the means to forecast the workload and resources needed to apply for these grants. Potential applicants should note that separate applications must be submitted for each program applied for.

This announcement contains all the necessary information and application materials to apply for funds under these three grant programs. The estimated funds available for new starts and the approximate number of new grants that have been or are to be awarded under this program announcement are as follows:

Program	Fiscal year	New start funds available (million)	Number of new grants
BCP	FY 1997	$14.2	150
SOP	FY 1997	4.4	50
TLP	FY 1998	7.3	40

In addition to the competitive new start grants, the Administration on Children, Youth and Families anticipates providing FY 1997 non-competitive, continuation funds to current grantees as follows:

Program	Continuation funds available (million)	Number of continuation grants
BCP	$25.1	300
SOP	3.0	33
TLP	6.6	36

Grantees eligible for these continuation grants will receive letters to that effect from the appropriate

Regional grants management offices and should not submit their continuation applications in response to this announcement. Only applications for new grants are solicited through this announcement.

This program announcement consists of six parts. Part I provides general information for potential applicants who wish to apply to operate programs serving runaway and homeless youth. Part II contains the evaluation criteria against which all applications will be competitively reviewed, evaluated and rated. Part III contains specific information necessary to apply for funds under each of the three programs. Part IV describes the application process. Part V provides instructions on the assembly and submission of applications. Part VI contains appendices to be consulted in preparation of applications. All forms needed to prepare applications for the two programs are found in Part VI, Appendix I, of this announcement.

The following outline is provided to assist in the review of this Federal Register announcement:

Part I. General Information

A. Background on Runaway and Homeless Youth

The Family and Youth Services Bureau (FYSB), within the Administration on Children, Youth and Families (ACYF), administers programs that support services to an adolescent population of runaway and homeless youth. Estimates of this population vary from 500,000 to 1,300,000 million. Many of these youth have left home to escape abusive situations, or because their parents could not meet their basic needs for food, shelter and a safe supportive environment. Many live on the streets.

While living on the streets or away from home without parental supervision, these youth are highly vulnerable. They may become victims of street violence, may be exploited by dealers of illegal drugs, or may become members of gangs who provide protection and a sense of extended family. Usually lacking marketable skills, they may be drawn into shoplifting, prostitution, or dealing drugs in order to earn money for food, clothing, and other daily expenses. Without a fixed address or regular place to sleep, they often drop out of school, forfeiting their opportunities to learn and to become independent, self-sufficient, contributing members of society. As street people, they may try to survive with little or no contact with medical professionals, the result being that health problems may go untreated and may worsen. Without the support of family, schools, and other community institutions, they may not acquire the personal values and work skills that will enable them to enter or advance in the world of work at other than the most minimal levels. Finally, as street people, they may create substantial law enforcement problems, endangering both themselves and the communities in which they are located. All these problems, real and potential, call for a comprehensive, nationwide, community-based program to address the needs of runaway and homeless youth.

B. Legislative Authority

Grants for the Basic Center Program for Runaway and Homeless Youth are authorized by Part A of the Runaway and Homeless Youth Act (RHY Act), 42 U.S.C. 5701 et seq. Grants for the Transitional Living Program for Homeless Youth are authorized under Part B of the Runaway and Homeless Youth Act. Part B was established in 1988 as part of Public Law 100–690. The RHY Act was enacted as Title III of the Juvenile Justice and Delinquency Prevention Act of 1974 (Pub. L. 93–415), and amended by the Juvenile Justice Amendments of 1977 (Pub. L. 95–115), the Juvenile Justice Amendments of 1980 (Pub. L.96–509), the Juvenile Justice Amendments of 1984 (Pub. L. 98–473), and the Juvenile Justice and Delinquency Prevention Act Amendments of 1992 (Pub. L. 102–586). Grants for coordinating, training and technical assistance, research, demonstration, evaluation and service projects are authorized under Part D of the RHY Act.

Grants for the Street Outreach Program are authorized by the Violent Crime Control and Law Enforcement Act of 1994 (Pub. L. 103–322, Sec. 40155) which amended Part A of the Runaway and Homeless Youth Act (42 USC 5711 *et seq.*) by creating Section

316, Grants for Prevention of Sexual Abuse and Exploitation.

Information collection requirements made in this announcement are covered under OMB Control Number 0970–0139.

C. Purpose, Goals and Objectives of the Federal Runaway and Homeless Youth Grant Programs

1. Basic Center Program for Runaway and Homeless Youth

The overall purpose of the BCP is to provide financial assistance to establish or strengthen community-based centers that address the immediate needs (outreach, temporary shelter, food, clothing, counseling, aftercare, and related services) of runaway and homeless youth and their families. Services supported by this program are to be outside the law enforcement, the child welfare, the mental health, and the juvenile justice systems. The program goals and objectives of Part A of the RHY Act are to:

a. Alleviate problems of runaway and homeless youth,

b. Reunite youth with their families and encourage the resolution of intrafamily problems through counseling and other services,

c. Strengthen family relationships and encourage stable living conditions for youth, and

d. Help youth decide upon constructive courses of action.

2. Street Outreach Program for Runaway and Homeless Youth

The overall purpose of SOP is to provide education and prevention services to reduce the incidence of sexual abuse of runaway, homeless, and street youth. This program is designed to support services for youth who are living on the street or in other unsafe environments and are at-risk of sexual abuse and/or exploitation.

3. Transitional Living Program for Homeless Youth

The overall purpose of TLP for homeless youth is to establish and operate transitional living projects for homeless youth. This program is structured to help older, homeless youth achieve self-sufficiency and avoid long-term dependency on social services. Transitional living projects provide shelter, skills training, and support services to homeless youth ages 16 through 21 for a continuous period not exceeding 18 months.

Transitional Living Program funds are to be used for the purpose of enhancing the capacities of youth-serving agencies in local communities to effectively address the service needs of homeless, older adolescents and young adults. Goals, objectives and activities that may be maintained, improved and/or expanded through a TLP grant must include, but are not necessarily limited to:

- Providing stable, safe living accommodations while a homeless youth is a program participant;
- Providing the services necessary to assist homeless youth in developing both the skills and personal characteristics needed to enable them to live independently;
- Providing education, information and counseling aimed at preventing, treating and reducing substance abuse among homeless youth;
- Providing homeless youth with appropriate referrals and access to medical and mental health treatment; and
- Providing the services and referrals necessary to assist youth in preparing for and obtaining employment.

Specifics regarding grant awards in each of these three programs are found in Part III, Sections A, B and C, of this announcement.

D. Definitions

1. The term ''homeless youth'' is defined differently for different programs.

Under Part A of the RHY Act, which authorizes the BCP, the term ''homeless youth'' means a person under 18 years of age who is in need of services and without a place of shelter where he or she receives supervision and care. This definition applies to all Basic Center projects and can be found in 45 CFR 1351.1(f).

Under Part B of the RHY Act, which authorizes the TLP, ''homeless youth'' means an individual who is not less than 16 years of age and not more than 21 years of age; for whom it is not possible to live in a safe environment with a relative; and who has no other safe alternative living arrangement. This definition applies to all Transitional Living programs and can be found in section 321(b)(1) of the RHY Act.

2. The term *public agency* means any State, unit of local government, combination of such States or units, or any agency, department, or instrumentality of any of the foregoing. This definition applies to all runaway and homeless youth programs funded under this announcement.

3. The term *runaway youth* means a person under 18 years of age who absents himself or herself from home or place of legal residence without the permission of parents or legal guardian. This definition applies to all Basic Center program grantees and can be found in 45 CFR 1351.1(k).

4. The term *shelter* includes host homes, group homes and supervised apartments. This definition applies to all RHY program grantees and is referenced in Section 322(1) of the RHY Act. As currently understood in the field:

Host homes are facilities providing shelter, usually in the home of a family, under contract to accept runaway and/or homeless youth assigned by the BCP service provider, and are licensed according to State or local laws.

Group homes are single-site residential facilities designed to house BCP clients who may be new to the program or may require a higher level of supervision. These dwellings operate in accordance with State or local housing codes and licensure.

A *supervised apartment* is a single unit dwelling or multiple unit apartment house operated under the auspices of the TLP service provider for the purpose of housing program participants.

5. The term *State* means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Marianas. This definition applies to the Basic Center Program and the Transitional Living Program and can be found in section 3601(10) of the Anti-Drug Abuse Act, incorporating by reference section 103(7) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended.

6. The term *street-based outreach and education* includes education and prevention efforts directed at youth that are victims of offenses committed by offenders who are not known to the victim as well as offenders who are known to the victim.

7. The term *street youth* means a juvenile who spends a significant amount of time on the street or in other areas of exposure to encounters that may lead to sexual abuse.

8. The term *temporary shelter* means the provision of short-term (maximum of 15 days) room and board and core crisis intervention services on a 24 hour basis. This definition applies to all Basic Center Program grantees and can be found in 45 CFR 1351.1(o).

9. The term *transitional living youth project* means a project that provides shelter and services designed to promote transition to self-sufficient living and to prevent long-term dependency on social services. This definition applies to all TLP program

grantees and is found in section 321(b)(2) of the RHY Act.

E. Final Priorities

Section 364 of the Runaway and Homeless Youth Act (RHY Act) requires the Department to publish annually for public comment a proposed plan specifying priorities the Department will follow in awarding grants and contracts under the RHY Act. The proposed plan for FY 1997 was published in the Federal Register on Thursday, December 19, 1997, and requested comments and recommendations from the field.

1. Public Comments

The Family and Youth Services Bureau (FYSB) usually receives approximately 20 written responses from a number of sources, principally Runaway and Homeless Youth Program grantees. The responses are generally supportive.

To the extent feasible, ACYF takes these and all other public comments into account when preparing the final priorities.

2. Final Program Priorities for Fiscal Year 1997

The Department will award new and continuation grants for provision of Basic Center, Street Outreach and Transitional Living services.

The Department will also award continuation funding to the National Communications System, to the ten Regional Training and Technical Assistance providers, and to a number of related program support activities.

The Final Program Priorities continue to support and emphasize a comprehensive youth development approach to services to youth and their families.

a. *Basic Center Program Grants*

Approximately 450 Basic Center grants, of which about 150 will be competitive new starts and 300 will be non-competitive continuations, will be funded in FY 1997.

Section 385(a)(2) of the Act requires that 90 percent of the funds appropriated under Part A (The Runaway and Homeless Youth Grant Program) be used to establish and strengthen runaway and homeless youth Basic Centers. Total funding under Part A of the Act for FY 1997 is expected to be approximately $43.6 million. This sum triggers the provision in the Act calling for a minimum award of $100,000 to each State, the District of Columbia, and Puerto Rico, and a minimum award of $45,000 to each of the four insular areas: the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Marianas.

b. *Street Outreach Program Grants*

In FY 1997, approximately $4.4 million will be used to fund new Street Outreach Program grants and $3.0 million will be used to fund non-competitive continuation Street Outreach Program grants.

c. *Transitional Living Program Grants*

In FY 1997, approximately $7.3 million has been used to fund new TLP grants and $6.6 million to fund TLP continuation grants. In FY 1998, total funding for TLP is expected to be approximately $14.9 million. Approximately $6.6 million will be awarded for new grants and $7.3 million will be awarded as continuation grants.

d. National Communications System

Part C, Section 331 of the Runaway and Homeless Youth Act, as amended, mandates support for a National Communications System to assist runaway and homeless youth in communicating with their families and with service providers. In FY 1994, a five-year grant was awarded to the National Runaway Switchboard, Inc., in Chicago, Illinois, to operate the system. Subject to the availability of funding, non-competitive continuation funding will be awarded to the grantee in FY 1997.

e. *Support Services for Runaway and Homeless Youth Programs*

(1) Training and Technical Assistance

Part D, Section 342 of the Act authorizes the Department to make grants to statewide and regional nonprofit organizations to provide training and technical assistance (T&TA) to organizations that are eligible to receive service grants under the Act. Eligible organizations include the Basic Centers authorized under Part A of the Act (The Runaway and Homeless Youth Grant Program) and the service grantees authorized under Part B of the Act (The Transitional Living Grant Program). The purpose of this T&TA is to strengthen the programs and to enhance the knowledge and skills of youth service workers.

In FY 1994, the Family and Youth Services Bureau awarded ten Cooperative Agreements, one in each of the ten Federal Regions, to provide T&TA to agencies funded by the Family and Youth Services Bureau to provide services to runaway and homeless youth. Each Cooperative Agreement is unique, being based on the characteristics and different T&TA needs in the respective Regions. Each has a five-year project period that will expire in FY 1999.

Subject to availability of funds, non-competitive continuation funding will be awarded to the ten T&TA grantees in FY 1997.

(2) National Clearinghouse on Families and Youth

In June 1992, a five-year contract was awarded by the Department to establish and operate the National Clearinghouse on Families and Youth. The purpose of the Clearinghouse is to serve as a central information point for professionals and agencies involved in the development and implementation of services to runaway and homeless youth. To this end, the Clearinghouse:

- Collects, evaluates and maintains reports, materials and other products regarding service provision to runaway and homeless youth;
- Develops and disseminates reports and bibliographies useful to the field;
- Identifies areas in which new or additional reports, materials and products are needed; and
- Carries out other activities designed to provide the field with the information needed to improve services to runaway and homeless youth.

The contract with the National Clearinghouse on Families and Youth expires in Fiscal Year 1997. Subject to availability of funds, a Request for Proposals will be published and a new contract will be awarded this Fiscal Year to sustain the Clearinghouse services.

(3) Runaway and Homeless Youth Management Information System (RHYMIS)

The Family and Youth Services Bureau awarded a three-year contract, which expires in Fiscal Year 1997, for the development and implementation of the Runaway and Homeless Youth Management Information System (RHYMIS) for FYSB programs. The data generated by the system are used to produce reports and information regarding the programs, including information for the required reports to Congress. The RHYMIS also serves as a management tool for FYSB and for individual programs.

Subject to availability of funds, in Fiscal Year 1997, a request for proposals to maintain RHYMIS services will be published and a new contract awarded.

(4) Monitoring Support for FYSB Programs

The Family and Youth Services Bureau uses a standardized, comprehensive monitoring instrument

and site visit protocols, including a pre-review component for monitoring runaway and homeless youth programs. The Bureau awarded a three year contract, which expires in Fiscal Year 1997, to provide logistical support for the peer review monitoring process, including nationwide distribution of the monitoring instrument. The findings from the monitoring visits are being used by the Regional Offices and the T/TA providers as a basis for their activities.

Subject to the availability of funds, in Fiscal Year 1997, a procurement to sustain this activity will be published and a new contract awarded.

f. *Research and Demonstration Initiatives*

Section 315 of the Act authorizes the Department to make grants to States, localities, and private entities to carry out research, demonstration, and service projects designed to increase knowledge concerning and to improve services for runaway and homeless youth. These activities serve to identify emerging issues and to develop and test models which address such issues.

(1) Improved Access to Services and Supports for Youth With Developmental Disabilities

The Family and Youth Services Bureau and the Administration of Developmental Disabilities are collaborating to address the needs of youth with developmental disabilities. In 1995, a competitive review process resulted in jointly funded grant awards to three demonstration projects designed to improve local coordination of services to youth with developmental disabilities.

Subject to the availability of funds, non-competitive continuation funding will be awarded to the three grantees in Fiscal Year 1997.

(2) Analysis, Synthesis, and Interpretation of New Information Concerning Runaway and Homeless Youth Programs

Over the past few years, considerable new knowledge and information has been developed concerning the runaway and homeless youth programs administered by FYSB, and concerning the youth and families served. The main sources of this new information are the Runaway and Homeless Youth Management Information System (RHYMIS) and a number of evaluation studies underway or recently completed. The RHYMIS and the evaluation studies contain descriptions of FYSB's grantee agencies, along with detailed data on the youth and families served.

A contract was awarded in Fiscal Year 1995 to analyze and synthesize this valuable data and to explore program and policy implications. Results from this contract effort will be available in Fiscal Year 1997.

g. *Comprehensive Youth Development Framework.*

A youth development approach has become central to all FYSB activities and programs since 1995. In Fiscal Year 1995, a contract was awarded to develop a youth development framework from a theoretical perspective. This framework is intended to enhance the capacity of policy and program developers, program managers, and youth services professionals to develop service models and approaches that will redirect youth in high risk situations toward positive pathways of development.

It is our hope and expectation that this document will serve as a basis for securing consensus on a working definition of youth development and for increasing awareness of the importance and benefits of a youth development perspective in serving youth.

The report from this contract will be available later in Fiscal Year 1997 and will receive wide distribution.

h. *Priorities for Administrative Changes*

To support the increased emphasis on youth development, two management or administrative changes will continue:

- Regional Offices have and will continue to play a significant role in the assessment of grant applications. This role includes Regional staff involvement (1) as chairpersons for peer review panels and (2) in conduct of administrative reviews of new start applications that take into account knowledge about the applicants' experience, effectiveness, and potential and of the geographic distribution of the grantees in their respective States and Regions. Final funding decisions will remain the responsibility of the Commissioner of the Administration on Children, Youth and Families.
- Efforts will be continued to avoid the problems of gaps in financial support between the expiration of one grant and the beginning of a new grant for current grantees that are successful in competition.

F. Eligible Applicants

The various legislative Acts that authorize the runaway and homeless youth programs addressed in this Federal Register announcement identify ''eligible applicants'' differently.

Accordingly, refer to the definition of eligible applicants appropriate to each FYSB RHY program described in Part III of this announcement. In addition please refer to Part VI, Appendix D for a listing of current grantees that are NOT eligible to apply under each of the grant programs.

Any non-profit organization submitting an application must submit proof of its non-profit status with its application. Proof can include a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in section 501(c)(3) of the IRS code, *or* a copy of the currently valid IRS tax-exemption certificate, *or* a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

G. Availability of Competitive New-Start Funds

1. Basic Center Program for Runaway and Homeless Youth

The Administration on Children, Youth and Families expects to award approximately $14.2 million for new competitive, Basic Center Program grants. In accordance with the RHY Act, the funds will be divided among the States in proportion to their respective populations under the age of 18, with a minimum award of $100,000 to each State, the District of Columbia, and Puerto Rico, and a minimum award of $45,000 to each of the four insular areas: Guam, American Samoa, the Commonwealth of the Northern Marianas and the Virgin Islands.

The funds available for both continuations and new starts in each of the States and insular areas is listed in the Table of Allocations by State (Part VI, Appendix H). In this Table, the amounts shown in the column labeled ''New Starts'' are the amounts available for competition in the respective States.

The number of new awards made within each State will depend upon the funds available (i.e., the State's total allotment less the amount required for non-competing continuations), as well as on the number of acceptable applications. Therefore, where the amount required for non-competing continuations in any State equals the State's total allotment, no new awards will be made.

All applicants under this announcement will compete with other applicants in the State in which their services would be provided. In the event that an insufficient number of acceptable applications is approved for funding from any State or jurisdiction,

the Commissioner, ACYF, will reallocate the unused funds.

Further information on the BCP application requirements is presented in Part III, Section A, and in Part IV.

2. Street Outreach Program for Runaway and Homeless Youth

The Administration on Children, Youth and Families expects to award approximately $4.4 million for new competitive Street Outreach Program grants.

Further information on the SOP application requirements is presented in Part III, Section B, and in Part IV.

3. Transitional Living Program for Homeless Youth

In FY 1998, the Administration on Children, Youth and Families expects to award approximately $7.3 million in new competitive Transitional Living Program grants.

Further information on the TLP application requirements is presented in Part III, Section C, and in Part IV.

H. Duration of Projects

This announcement solicits applications for projects of up to three years (36-month project periods) for the BCP, the SOP and the TLP. Initial grant awards, made on a competitive basis, will be for one-year (12-month) budget periods. Applications for continuation grants beyond the one-year budget periods, but within the 36-month project periods, will be entertained in subsequent years on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantees, and determination that continued funding would be in the best interest of the government.

I. Maximum Federal Award and Grantee Share of the Project

The maximum amount of Federal funds for which an applicant can apply is specified in the program descriptions found in Part III of this announcement. The non-Federal share requirements for each of the three programs are also found in Part III of this announcement.

The non-Federal share may be met by cash or in-kind contributions. Federal funds provided to States and services or other resources purchased with Federal funds may not be used to match project grants. Applicants which do not provide the required percentage of non-Federal share *will not be funded.* For-profit applicants for Basic Center Program grants are reminded that no grant funds may be paid as profit to any recipient of a grant or sub-grant (45 CFR 74.705).

Part II. Evaluation Criteria

The five criteria that follow will be used to review and evaluate each application under the BCP, the SOP and the TLP and should be addressed in developing the program narratives. The point values following each criterion heading indicate the numerical weight each criterion will be accorded in the review process. Note that the highest possible value BCP, SOP and TLP applications can receive is 105 points. See Criterion 4 for more specific information.

Criterion 1. Objectives and Need for Assistance (15 Points)

Pinpoint any relevant physical, economic, social, financial, institutional, or other problems requiring a solution. Demonstrate the need for the assistance and state the goals or service objectives of the project. Supporting documentation or other testimonies from concerned interests other than the applicant may be used. Give a precise location of the project site(s) and area(s) to be served by the proposed project. Maps or other graphic aids may be attached. (The applicant should refer to Part I, Section C, of this announcement for a description of each program's purpose.)

Criterion 2. Results or Benefits Expected (20 Points)

Identify the results and benefits to be derived from the project. State the numbers of runaway and homeless youth and their families to be served, and describe the types and quantities of services to be provided. Identify the kinds of data to be collected and maintained, and discuss the criteria to be used to evaluate the results and success of the project.

Criterion 3. Approach (35 Points)

Outline a plan of action pertaining to the scope of the project and detail how the proposed work will be accomplished. Describe any unusual features of the project, such as extraordinary social and community involvements, and how the project will be maintained after termination of Federal support. Explain the methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved.

Criterion 4. Staff Background and Organizational Experience (20–25 Points)

List the organizations, cooperators, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution. Summarize the background and experience of the project director and key project staff and the history of the organization. Demonstrate the ability to effectively manage the project and to coordinate activities with other agencies. Applicants are encouraged to discuss staff and organizational experience in working with runaway and homeless youth populations and may include information regarding their past performance under RHYP grants. Applicants may refer to the staff resumes and to the Organizational Capability Statement included in the submission.

Legislation authorizing each of the Federal Runaway and Homeless Youth Programs requires that priority for funding be given to agencies with experience in providing direct services to runaway and homeless youth. In line with this requirement, BCP, SOP and TLP applicants having three (3) or more years of continuous effort serving runaway and homeless youth in one or more areas set forth in Section 312 of the Act are eligible to receive an additional five (5) points on this criterion.

Criterion 5. Budget Appropriateness (10 Points)

Demonstrate that the project's costs (overall costs, average cost per youth served, costs for different services) are reasonable in view of the anticipated results and benefits. (Applicants may refer (1) to the budget information presented in Standard Forms 424 and 424A and in the associated budget justification, and (2) to the results or benefits expected as identified under Criterion 2.)

The Program Narrative information provided by the applicant in response to any one or more of the three priority area descriptions identified in Part III of this announcement should be organized and presented according to these five evaluation criteria.

Part III. Program Areas

A. Basic Center Program for Runaway and Homeless Youth

Eligible Applicants: Any State, unit of local government, combination of units of local government, public or private agency, organization, institution, or other non-profit entity is eligible to apply for these funds. Federally recognized Indian Tribes are eligible to apply for Basic Center grants. Non-Federally recognized Indian Tribes and urban Indian organizations are also

eligible to apply for grants as private, non-profit agencies.

Current Basic Center Program grantees with project periods ending by September 30, 1997 and all other eligible applicants not currently receiving Basic Center funds may apply for a new competitive Basic Center grant under this announcement.

Basic Center Program Grantees (including subgrantees) with one or two years remaining on their current grant and the expectation of continuation funding in Fiscal Year 1997 may not apply for a new Basic Center grant under this announcement. These grantees are eligible to apply for non-competitive continuation funding in FY 1997 and will receive instructions from their respective ACF Regional Offices on the procedures for applying for continuation grants.

Please refer to Part VI, Appendix D.1 for a listing of current grantees that are NOT eligible to apply for new Basic Center Program grants under this announcement.

As required by runaway and homeless youth legislation, priority for funding will be given to agencies with demonstrated experience establishing and operating centers that provide direct services to runaway and homeless youth in a manner that is outside the law enforcement system, the child welfare system, the mental health system and the juvenile justice system. Demonstrated experience providing direct services means three (3) or more years of continuous effort serving runaway and homeless youth in one or more areas set forth in Section 312 of the Act. Applicants claiming credit for this preference must include a statement of no more than one page documenting the relevant experience.

Program Purpose, Goals, and Objectives: The Administration on Children, Youth and Families will award approximately 150 new service grants to establish or strengthen existing or proposed runaway and homeless youth Basic Centers. These programs must be locally controlled efforts that provide temporary shelter, counseling and related services to juveniles who have left home without permission of their parents or guardians or to other homeless juveniles.

Applications are solicited under this program area to provide direct services that fulfill the program purposes, goals and objectives set forth in the legislation and as specified in Part I, section C.1 of this announcement.

Background: The Runaway Youth and Homeless Youth Act of 1974 was a response to widespread concern regarding the alarming number of youth who were leaving home without parental permission, crossing State lines, and who, while away from home, were exposed to exploitation and other dangers of street life.

Each Basic Center funded under the authorizing legislation is required to provide outreach to runaway and homeless youth; temporary shelter for up to fifteen days; food; clothing; individual, group, and family counseling; and related services. Many Basic Centers provide their services in residential settings with a capacity for no more than 20 youth. Some centers also provide some or all of their shelter services through host homes (usually private homes under contract to the centers), with counseling and referrals being provided from a central location.

In FY 1996, approximately 50,000 youth received shelter and non-shelter services through ACYF-funded Basic Centers. The primary presenting problems of these youth include conflict with parents or other adults, including physical and sexual abuse; other family crises such as divorce, death, or sudden loss of income; and personal problems such as drug use, or problems with peers, school attendance and truancy, bad grades, inability to get along with teachers, and learning disabilities.

Low self-esteem is a major problem among youth participating in the Basic Center Program. Slightly more than half gave an indication of clinical depression; and 14 percent reported having made at least one suicide attempt.

After receiving services from Basic Center programs, approximately 65 percent of the youth return to their families; approximately 25 percent go to a variety of other situations such as Job Core, independent living programs, drug treatment programs and other institutional programs; and approximately 10 percent return to the streets or leave the centers with no known destination.

Minimum Requirements for Project Design: As part of addressing the evaluation criteria outlined in Part II of this announcement, each applicant must address the following items in the program narrative section of the proposal.

Objectives and Need for Assistance

1. Applicant must specify the goals and objectives of the project and how implementation will fulfill the purposes of the legislation identified in Part I, section C.1. of this announcement.

2. Applicant must describe the conditions of youth and families in the area to be served, with an emphasis on the incidence and characteristics of runaway and homeless youth and their families. The discussion must consider matters of family functioning, along with the health, education, employment, and social conditions of the youth, including at-risk conditions or behaviors such as drug use, school failure, and delinquency.

3. Applicant must discuss the existing support systems for at-risk youth and families in the area, with specific references to law enforcement, health and mental health care, social services, school systems, and child welfare. In addition, other agencies providing shelter and services to runaway and homeless youth in the area must be identified.

4. Within the context of the existing support systems, applicant must demonstrate the need for the center and indicate the objectives that the program would work toward fulfilling.

5. Applicant must describe the area to be served by the proposed center, and must demonstrate that the center is or will be located in an area which is frequented by and/or easily accessible by runaway and homeless youth.

Results and Benefits Expected

1. Applicant must specify the numbers of runaway and homeless youth and their families to be served, the number of beds available for runaway and homeless youth and the types and quantities of services to be provided.

2. Applicant must describe the anticipated changes in attitudes, values and behavior, and improvements in individual and family functioning that will occur as a consequence of the services provided by the center.

3. Applicant must discuss the expected impact of the project on the availability of services to runaway and homeless youth in the local community and indicate how the project will enhance the organization's capacity to provide services that address the needs of runaway and homeless youth in the community.

Approach

1. Applicant must describe the center's youth development approach or philosophy and indicate how it underlies and integrates all proposed activities, including provision of services to runaway and homeless youth and involvement of the youth's parents or legal guardians. Specific information must be provided on how youth will be involved in the design, operation and evaluation of the program.

2. Applicant must describe how runaway and homeless youth and their families will be reached, and how

services will be provided in compliance with the Program Performance Standards listed in Part VI, Appendix A.

3. Applicant must include detailed plans for implementing direct services based upon a youth development approach and upon identified goals and objectives. Applicant must identify the strategies that will be employed and the activities that will be implemented, including innovative approaches to securing appropriate center services for the runaway and homeless youth to be served, for involving family members as an integral part of the services provided, for periodic review and assessment of individual cases, and for encouraging awareness of and sensitivity to the diverse needs of runaway and homeless youth who represent particular ethnic and racial backgrounds, sexual orientations, or who are street youth.

4. Applicant must describe the center's plans for conducting an outreach program that, where applicable, will attract members of ethnic and racial minorities and/or persons with limited ability to speak English.

5. Applicant must describe the center's plans and procedures for intake and assessment of the youth upon arrival at the center.

6. Applicant must describe the center's plans for contacting the parents or other relatives of the youth they serve, for ensuring the safe return of the youth to their parents, relatives or legal guardians if it is in their best interests, for contacting local governments pursuant to formal or informal arrangements established with such officials, and for providing alternative living arrangements when it is not safe or appropriate for the youth to return home.

7. Applicant must describe the type of shelter that will be available, the shelter capacity of the center and the system of staff supervision to be implemented in the shelter.

8. Applicant must describe the center's plans for ensuring proper coordination with law enforcement personnel, health and mental health care personnel, social service personnel, and welfare personnel.

9. Applicant must describe the center's plans for ensuring coordination with the schools to which runaway and homeless youth will return, and for assisting the youth to stay current with the curricula of these schools.

10. Applicant must describe the center's procedures for dealing with youth who have run from foster care placements.

11. Applicant must describe procedures for dealing with youth who have run from correctional institutions, and must show that procedures are in accordance with Federal, State and local laws.

12. Applicant must describe the center's plans and procedures for providing aftercare services and for ensuring, whenever possible, that aftercare services will also be provided to those youth who are returned beyond the State in which the center is located.

13. Applicant must agree to gather and submit program and client data required by FYSB through the Runaway and Homeless Youth Management Information System (RHYMIS). If applicant is a current recipient of a BCP or TLP grant, applicant must describe the extent to which it now gathers and submits required data to the RHYMIS. Current recipients of a FYSB grant who are not submitting the required data are at risk of not being considered for a new grant award.

While the computer software and training for the implementation of the RHYMIS will be provided by FYSB to grantees, applicant should include a request for funds in its budget (within the maximum Federal funds allowed) for any computer equipment needed for implementation of the RHYMIS.

To determine whether an agency's current computer equipment is adequate, or whether purchase of an upgrade or of new equipment is necessary, potential applicants are invited to contact the RHYMIS Technical Support Group at Information Technology Incorporated, Bethesda, MD, telephone: 1–800–392–2395.

14. Applicant must agree to cooperate with any research or evaluation efforts sponsored by the Administration for Children and Families.

15. Applicant must describe how the activities implemented under this project will be continued by the agency once Federal funding for the project has ended. The applicant must describe specific plans for accomplishing program phase-out for the last two quarters of the 36-month project period in the event the applicant does not receive a new award.

STAFF BACKGROUND AND ORGANIZATIONAL EXPERIENCE

1. As priority for funding will be given to agencies and organizations that have documented experience in establishing and operating centers that provide direct services to runaway and homeless youth, applicant must include a brief description of the organization and its experience in providing services to this client population.

2. Applicant must include a description of current and proposed staff skills and knowledge regarding runaway and homeless youth and indicate how staff will be utilized in achieving the goals and objectives of the program. Information on proposed staff training and brief resumes or job descriptions may be included.

3. Applicant must describe procedures for maintaining confidentiality of records on the youth and families served. Procedures must insure that no information on the youth and families is disclosed without the consent of the individual youth, parent or legal guardian. Disclosures without consent can be made to another agency compiling statistical records if individual identities are not provided or to a government agency involved in the disposition of criminal charges against an individual runaway or homeless youth.

4. Applicant must describe how the project has established or will establish formal service linkages with other social service, law enforcement, educational, housing, vocational, welfare, legal service, drug treatment and health care agencies in order to ensure appropriate referrals for the project clients when needed.

5. Applicant must describe how community and other support will be secured to continue the project at the conclusion of the Federal grant period.

Budget Appropriateness

1. Applicant must discuss and justify the costs of the proposed project in terms of numbers of youth and families to be served, types and quantities of services to be provided, and the anticipated outcomes for the youth and families.

2. The applicant must describe the fiscal control and accounting procedures that will be used to ensure prudent use, proper disbursement, and accurate accounting of funds received under this program announcement.

Duration of Project: This announcement solicits applications for Basic Center projects of up to three years duration (36-month project periods). Initial grant awards, made on a competitive basis, will be for one-year (12-month) budget periods. Applications for continuation grants beyond the one-year budget periods, but within the 36-month project periods, will be entertained in subsequent years on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantee, and determination that continued funding would be in the best interest of the government.

Federal Share of Project Costs: Priority will be given to applicants

which apply for less than $200,000 per year. The maximum Federal share for a 3-year project period is $600,000.

Applicant Share of Project Costs: Basic Center grantees must provide a non-Federal share or match of at least ten percent of the Federal funds awarded. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a three-year project costing $300,000 in Federal funds (based on an award of $100,000 per 12-month budget period) must include a match of at least $30,000 ($10,000 per budget period).

B. Street Outreach Program for Runaway and Homeless Youth

Eligible Applicants: Any private, nonprofit agency is eligible to apply for these funds. Non-Federally recognized Indian Tribes and urban Indian organizations are eligible to apply for grants as private, non-profit agencies.

Current Street Outreach Program grantees with Basic Center Program project periods ending September 30, 1997 and all other eligible applicants not currently receiving SOP funds may apply for a new competitive SOP grant under this announcement.

Current Street Outreach Program grant recipients with one or two years remaining on their Basic Center Program grant and the expectation of non-competitive continuation Basic Center Program funding in Fiscal Year 1997 may not apply for a new Street Outreach Program grant under this announcement. These grantees are eligible to apply for non-competitive continuation funding in FY 1997 and will receive instructions from their respective ACF Regional Offices on the procedures for applying for continuation grants.

Please note that public agencies are NOT eligible to apply for these funds.

Please refer to Part VI, Appendix D.2 for a listing of current grantees that are NOT eligible to apply for new Street Outreach Program grants under this announcement.

As required by the legislation, priority for funding will be given to agencies that have experience in providing services to runaway, homeless, and street youth. Demonstrated experience providing direct services means three (3) or more years of continuous effort serving runaway, homeless or and street youth.

Applicants claiming credit for this preference must include a statement of no more than one page documenting the relevant experience. Applicants with 3 years of demonstrated experience providing direct services to the target population are eligible to receive an additional five (5) points in the Staff Background and Organizational Experience evaluation criterion section.

Program Purpose, Goals, and Objectives: The Administration on Children, Youth and Families will award approximately 50 new SOP grants for street-based outreach and education. The programs must provide services that focus on establishing and building relationships between street youth and program staff with the goal of helping youth leave the streets. These services might include treatment, counseling, provision of information, and referral services for runaway, homeless, and street youth who have been subjected to or are at risk of being subjected to exploitation or sexual abuse. These programs must have access to local emergency shelter space that can be made available for youth willing to come in off the streets. In addition, street outreach staff must have access to the shelter in order to maintain important and constant interaction with the youth during the time they are in the shelter.

Applications are solicited under this program area to provide direct services that fulfill the program purposes, goals and objectives set forth in the legislation and as specified in Part I, Section C.2 of this announcement.

Background

In response to the needs of street youth who are subjected, or at risk of being subjected, to sexual abuse, Congress amended the Runaway and Homeless Youth Act by authorizing the Education and Prevention Services to Reduce Sexual Abuse of Runaway, Homeless, and Street Youth Program as part of the Violent Crime Control and Law Enforcement Act of 1994. This program is referred to as the Street Outreach Program (SOP) for Runaway, Homeless and Street Youth.

The array of social, emotional and health problems faced by youth on the street are dramatically compounded by incidence of exploitation and/or sexual abuse. Street youth are victimized by strangers as well as by individuals known to the youth, and a significant number of homeless youth are exploited as they participate in survival sex and prostitution to meet their basic needs for food and shelter. Because of these issues, sexually exploited youth often need more intensive services. Youth must be afforded the opportunity to slowly build trust relationships with caring and responsible adults as the first step to successfully encouraging them to leave the streets.

Minimum Requirements for Project Design: As a part of addressing the evaluation criteria outlined in Part II of this announcement, each applicant must address the following items in the program narrative section of their application.

Objectives and Need for Assistance

1. Applicant must specify the goals and objectives of the project and how implementation will fulfill the purposes of the legislation identified in Part I, section C.2 of this announcement.

2. Applicant must describe the specific geographic area frequented by street youth and the incidence and characteristics of these youth, including their social needs and health problems.

3. The applicant must demonstrate that the area that the program will serve is or will be located in the area which is frequented by and /or easily accessible by these street youth.

4. The applicant must describe currently available services for street youth. Service gaps must be addressed and considered in developing program objectives.

5. The applicant must describe the objectives of the program and the manner in which these objectives will help to encourage youth to leave the streets.

Results and Benefits

1. Applicant must provide detailed information on the expected results and benefits of the program in terms of the number and frequency of youth served annually and in terms of the benefits and outcomes that will accrue to the street youth.

2. The applicant must describe barriers to effective delivery of services that currently exist or are anticipated and identify actions the program will take to overcome the barriers to serving this population.

Approach

1. The applicant must describe a youth development approach to serving street youth including how youth will be involved in the design, operation and evaluation of the program.

2. Applicant must describe its current or proposed street outreach effort, including: framework and philosophy, hours of operation, staffing pattern and support, services provided, and expertise in approaching and addressing issues of victims of sexual abuse.

3. The applicant must describe a plan to provide street-based outreach services during hours when youth will most likely avail themselves of those services (late afternoon, evenings, nights, and weekends).

4. The applicant must show that there is guaranteed access to emergency shelter services that can be made available to street youth. In addition, they must show that street outreach workers will have guaranteed access to the street youth that are taking advantage of the shelter's services.

5. The applicant must describe the range of services that will be offered to street youth and methods of their provision by demonstrating that, at a minimum, emergency shelter, street-based outreach and education, survival aid, individual assessment, counseling, prevention and education activities and information, information and referral services, crisis intervention and follow-up support will be available. Applicant must specify which services (excluding shelter services) will be provided through contracts.

6. The applicant must demonstrate that supportive training and appropriate street-based outreach supervision is provided to outreach staff and volunteers. This supervision must include guidance on policies and boundaries regarding their job responsibilities and their contact with and responsibilities to young people; training that will assist them in abiding by policies and maintaining appropriate boundaries; as well as training on youth development, sexual abuse, and other topics relevant to street life.

7. The applicant must show that the relationship of staff and volunteer gender, ethnicity and life experiences are relevant to those of the young people being served.

8. The applicant must describe current efforts or plans to work with organizations that serve victims of domestic violence and sexual assault in order to tap into their expertise and to coordinate services.

9. Applicant must describe how the project has established or will establish formal service linkages with other social service, law enforcement, educational, housing, vocational, welfare, legal service, drug treatment, other health care and other relevant service agencies in order to ensure appropriate service referrals for the project clients.

10. Applicant must agree to gather and submit program and client data required by FYSB through the Runaway and Homeless Youth Management Information System (RHYMIS). If applicant is a current recipient of a BCP or TLP grant, applicant must describe the extent to which it now gathers and submits required data to the RHYMIS. Current recipients of a FYSB grant who are not submitting the required data are at risk of not being considered for a new grant award.

While the computer software and training for the implementation of the RHYMIS will be provided by FYSB to grantees, applicant should include a request for funds in its budget (within the maximum Federal funds allowed) for any computer equipment needed for implementation of the RHYMIS. To determine whether an agency's current computer equipment is adequate, or whether purchase of an upgrade or of new equipment is necessary, potential applicants are invited to contact the RHYMIS Technical Support Group at Information Technology Incorporated, Bethesda, MD, Telephone: 1–800–392–2395.

11. Applicant must agree to cooperate with any research or evaluation efforts sponsored by the Administration for Children and Families.

Staff Background and Organizational Experience

1. As priority for funding will be given to organizations with experience in providing services to runaway, homeless, and street youth, applicant must describe the organization and the current services it provides to this specific target population including the direct provision of emergency shelter and supportive services.

2. Applicant must include a description of current and proposed staff skills and knowledge regarding runaway, homeless and street youth and indicate how staff will be utilized in achieving the goals and objectives of the program. Information on proposed staff training and brief resumes or job descriptions may be included.

3. Applicant must describe procedures for maintaining confidentiality of records on the youth served and families served. Procedures must insure that no information on the youth and families is disclosed without the consent of the individual youth, parent or legal guardian. Disclosures without consent can be made to another agency compiling statistical records if individual identities are not provided or to a government agency involved in the disposition of criminal charges against an individual runaway, homeless or street youth.

4. Applicant must describe how community and other resources will be secured to continue the project at the conclusion of the Federal grant period.

Budget Appropriateness

1. Applicant must discuss and justify the costs of the proposed project in terms of the number of youth to be served, the types and quantities of services to be provided, and the anticipated outcomes for youth.

2. Applicant must describe the fiscal control and accounting procedures that will be used to ensure prudent use, proper disbursement, and accurate accounting of funds received under the Street Outreach Program.

Duration of Project: This announcement solicits applications for Street Outreach Program projects of up to three years (36-month project periods). Initial grant awards, made on a competitive basis, will be for one-year (12-month) budget periods. Applications for non-competing continuation grants beyond the one-year budget periods, but within the 36-month project periods, will be considered subject to the availability of funds, satisfactory progress of the grantee, and determination that continued funding would be in the best interest of the government.

Federal Share of Project Costs: Applicants may apply for up to $100,000 in Federal support each year, which equals a maximum of $300,000 for a 3-year project period. The Maximum Federal share of project costs is $100,000 for 12 months.

Applicant Share of Project Cost: The applicant is required to provide 10 percent of the Federal Project costs each year. For example, a project requesting $100,000 in Federal funds must include a match of at least $10,000.

The non-Federal share may be met by cash and/or in-kind contributions. Federal funds provided to States and services or other resources purchased with Federal funds may not be used to match project grants. Applicants which do not provide the required percentage of non-Federal share will not be funded.

Background

C. Transitional Living Program for Homeless Youth (TLP)

Eligible Applicants: Any State, units of local government (or a combination of units of local government), public or non-profit, private agency organizations, institutions or other non-profit entities. Federally recognized Indian Tribes are eligible to apply for TLP grants. Non-Federally recognized Indian Tribes and urban Indian organizations are also eligible to apply for grants as private, non-profit agencies.

Current TLP grantees with project periods ending by September 30, 1997 and all other eligible applicants not currently receiving TLP funds may apply for a new competitive TLP grant under this announcement.

TLP grantees (including subgrantees) with one or two years remaining on their current awards and the expectation of continuation funding in Fiscal Year

1998 may not apply for a new TLP grant under this announcement. These grantees are eligible to apply for non-competitive continuation funding in FY 1997. These continuation grantees will receive instructions from their respective ACF Regional Offices on the procedures for applying for continuation grants.

Please refer to Part VI, Appendix D.3 for a listing of current grantees which are ineligible to apply for new TLP grants under this announcement.

As required by runaway and homeless youth legislation, priority for funding will be given to agencies with demonstrated experience in providing direct services to runaway and homeless youth. In line with this requirement, applicants which have three (3) or more years of continuous effort serving runaway and homeless youth in one or more areas set forth in Section 312 of the Act are eligible to receive an additional five (5) points in the Staff Background and Organizational Experience evaluation criterion section.

Program Purpose, Goals and Objectives: The Administration on Children, Youth and Families will award approximately 40 new service grants to provide shelter, skill training and support services to assist homeless youth in making a smooth transition to self-sufficiency and to prevent long-term dependency on social services.

Applications are solicited under this priority area to carry out direct service projects designed to carry out the program purpose, goals and objectives set forth in the legislation and as specified in Part I, section C.2 of this announcement.

Background: It is estimated that about one-fourth of the youth served by all runaway and homeless youth programs are homeless. This means that the youth cannot return home or to another safe living arrangement with a relative. Other homeless youth have ''aged out'' of the child welfare system and are no longer eligible for foster care.

These young people are often homeless through no fault of their own. The families they can no longer live with are often physically and sexually abusive and involved in drug and alcohol abuse. They cannot meet the youth's basic human needs (shelter, food, clothing), let alone provide the supportive and safe environment needed for the healthy development of self-image and the skills and personal characteristics which would enable them to mature into a self-sufficient adult.

Homeless youth, lacking a stable family environment and without social and economic supports, are at high risk of being involved in dangerous lifestyles and problematic or delinquent behaviors. More than two-thirds of homeless youth served by ACYF-funded programs report using drugs or alcohol and many participate in survival sex and prostitution to meet their basic needs.

Homeless youth are in need of a support system that will assist them in making the transition to adulthood and independent living. While all adolescents are faced with adjustment issues as they approach adulthood, homeless youth experience more severe problems and are at greater risk in terms of their ability to successfully make the transition to independent living.

The Transitional Living Program for Homeless Youth specifically targets services to homeless youth and affords youth service agencies with an opportunity to serve homeless youth in a manner which is comprehensive and geared towards ensuring a successful transition to self-sufficiency. The TLP also improves the availability of comprehensive, integrated services for homeless youth, which reduces the risks of exploitation and danger to which these youth are exposed while living on the streets without positive economic or social supports.

Minimum Requirements for Project Design: As a part of addressing the evaluation criteria outlined in Part II of this announcement, each applicant must address the following items in the program narrative section of their application.

Objectives and Need for Assistance

1. Applicant must specify the goals and objectives of the program and how the implementation of the objectives will fulfill the requirements of the legislation identified in Part I, section C.3. of this announcement.

2. Applicant must discuss the issue of youth homelessness in the community to be served, the present availability of services for homeless youth and provide documentation of the incidence of homeless youth.

3. Applicant must describe the system that will be used to ensure that individual clients will meet the eligibility criteria of need for service as established by the Act. This may include a discussion of the intake and assessment activities which will be conducted with a client prior to acceptance into the TLP project. The applicant is encouraged to include samples of any forms to be used to determine eligibility and appropriate services.

Results and Benefits Expected

1. Applicant must describe how homeless youth will be reached and identify the number who will be served annually on both a residential and non-residential basis.

2. Applicant must provide information on the expected results and benefits of the program in terms of the number of youth who will successfully complete the program as well as potential problems or barriers to program implementation that might be possible reason(s) for non-success. Applicant must also discuss the organization's policy on termination and re-entry of youth out of and into the program.

3. Applicant must discuss the expected impact of the project on the availability of services to homeless youth in the local community and indicate how the project will enhance the organization's capacity to provide services to address youth homelessness in the community.

Approach

Applicant must discuss how they will implement the statutory requirements of the Act. Specifically, the applicant must describe plans for the provision of shelter and services and for program administration. In addition, the applicant must describe the program's youth development approach or philosophy and indicate how it underlies and integrates all proposed activities.Specific information must be provided on how youth will be involved in the design, operation and evaluation of the program.

1. *Shelter:* Applicant must:

- Assure that shelter is provided through one or a combination of the following:

(a) A group home facility;
(b) Family host homes; or
(c) Supervised apartments.

Applicant must indicate if the shelter will be provided directly or indirectly. When shelter will be provided indirectly, applicant must submit copies of formal written agreements with service providers regarding the terms under which shelter is provided.

- Assure that the facility used for housing, whether a shelter, host family home and/or supervised apartment, shall accommodate no more than 20 youth at any given time; shall have a sufficient number of staff to ensure on-site supervision at each shelter option that is not a family home including periodic, unannounced visits from project staff; and is in compliance with State and local licensing requirements;
- Assure, if applicable, that the applicant meets the requirements of the

RHY Act for the lease of surplus Federal facilities for use as transitional living shelter facilities. Each surplus Federal facility used for this purpose must be made available for a period not less than two years, and no rent or fee shall be charged to the applicant in connection with use of such a facility. Any structural modifications or additions to surplus Federal facilities become the property of the government of the United States. All such modifications or additions may be made only after receiving prior written consent from the appropriate Department of Health and Human Services official.

2. *Services*:

Applicant must include a description of the core services to be provided. The description must include the purpose and concept of the service, its role in both the overall program design and the individual client TLP plan. The services to be provided must include, but are not necessarily limited to, the following:

- Basic life skills information and counseling, including budgeting, money management, use of credit, housekeeping, menu planning and food preparation, consumer education, leisure-time activities, transportation, and obtaining vital documents (Social Security card, birth certificate).
- Interpersonal skill building, such as developing positive relationships with peers and adults, effective communication, decision making, and stress management.
- Educational advancement, such as GED preparation and attainment, post-secondary training (college, technical school, military, etc.), and vocational education.
- Job preparation and attainment, such as career counseling, job preparation training, dress and grooming, job placement and job maintenance.
- Mental health care, such as counseling (individual and group), drug abuse education, prevention and referral services, and mental health counseling.
- Physical health care, such as routine physicals, health assessments, family planning/parenting skills, and emergency treatment.
- The substantive participation of youth in the assessment and implementation of their needs, including the development and implementation of the individual transitional living plan and in decisions about the services to be received.

The applicant must specifically describe programmatic efforts planned and/or implemented to encourage awareness of and sensitivity to the particular needs of homeless youth who are members of ethnic, racial and sexual minority groups and/or who are street youth.

3. *Administration*: Applicant must:

- Describe the procedures to be employed in the development, implementation and monitoring of an individualized, written transitional living plan for each program client which addresses the provision of services, and is appropriate to the individual developmental needs of the client.
- Assure that the clients will substantively participate in the assessment of their needs and in decisions about the services to be received.
- Assure that the outreach programs to be established are designed to attract individuals who are eligible to participate in the project.
- Provide an assurance that housing and services will be available to a client for a continuous period not to exceed 540 days (18 months).
- Describe the methods to be employed in collecting statistical records and evaluative data and for submitting annual reports on such information to the Department of Health and Human Services.
- Describe how the applicant will ensure the confidentiality of client records.
- Applicant must describe how the activities implemented under this project will be continued by the agency once Federal funding for the project has ended. The applicant must describe specific plans for accomplishing program phase-out for the last two quarters of program project period in the event that the applicant would not receive a new award.
- Applicant must agree to gather and submit program and client data required by FYSB through the Runaway and Homeless Youth System (RHYMIS). If applicant is a current recipient of a Runaway and Homeless Youth Program grant, applicant must describe the extent to which it now gathers and submits required data to the RHYMIS. Current recipients of a FYSB grant which are not submitting the required data are at risk of not being considered for a new grant award.

While the computer software and training for the implementation of the RHYMIS will be provided by FYSB to grantees, applicant should include a request for funds in its budget for any computer equipment needed for implementation of the RHYMIS. To determine whether an agency's current computer equipment is adequate, or whether purchase of an upgrade or of new equipment is necessary, potential applicants are invited to contact the RHYMIS Technical Support Group at Information Technology Incorporated, Bethesda, MD, telephone: 1–800–392–2395.

- Applicant must agree to cooperate with any research or evaluation efforts sponsored by the Administration for Children and Families.

Staff Background and Organizational Experience

1. As priority for funding will be given to agencies and organizations that have documented experience in providing direct services to homeless youth, applicant must include a brief description of the organization and its experience in providing services to this specific client population.

2. Applicant must include a description of current and proposed staff skills and knowledge regarding homeless youth and indicate how staff will be utilized in achieving the goals and objectives of the program. Information on proposed staff training and brief resumes or job descriptions may be included.

3. Applicant must describe how the project has established or will establish formal service linkages with other social service, law enforcement, educational, housing, vocational, welfare, legal service, drug treatment and health care agencies in order to ensure appropriate referrals for the project clients where and when needed.

4. Applicant must describe procedures for maintaining confidentiality of records on the youth and families served. Procedures must insure that no information on the youth and families is disclosed without the consent of the individual youth, parent or legal guardian. Disclosures without consent can be made to another agency compiling statistical records if individual identities are not provided or to a government agency involved in the disposition of criminal charges against an individual runaway or homeless youth.

Budget Appropriateness

1. Applicant must discuss and justify the costs of the proposed project in terms of numbers of youth to be served, the types and quantities of services to be provided, and the anticipated outcomes for the youth.

2. Applicant must describe the fiscal control and accounting procedures that will be used to ensure prudent use, proper disbursement, and accurate accounting of funds received under this program announcement.

3. Applicant must describe how cost-effective use of TLP funds will be ensured by taking maximum advantage

of existing resources within the State which would help in the operation or coordination of a TLP, including those resources which are supported by Federal Independent Living Initiatives funds. Also, applicant must describe efforts to be undertaken over the length of the project which may increase non-Federal resources available to support the TLP.

Duration of Project: Because successful applicants will receive grants with funds appropriated by Congress for FY 1998, project periods for these new awards will begin when FY 1998 funds are appropriated and made available to ACYF, but in no case will they begin prior to October 1, 1997.

This announcement solicits TLP applications for projects of up to three years (36 month project periods). Grant awards, made on a competitive basis, will be for a one year (12-month) budget period. Applications for continuation grants beyond the one-year budget period, but within the 36 month project period, will be entertained in subsequent years on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantee and determination that continued funding would be in the best interest of the government.

Federal Share of Project Costs: Applicants may apply for up to $200,000 per year, which equals a maximum of $600,000 for a 3-year project period.

Applicant Share of the Project: The Runaway and Homeless Youth Act requires a non-Federal matching requirement of ten percent of the total Federal funds. For example, a project requesting $600,000 in Federal funds over a three year project period (based on an award of $200,000 per twelve month budget period) must include a match of at least $60,000 (10% of the Federal share).

Part IV. Application Process

A. Assistance to Prospective Grantees

Potential grantees can direct questions about program requirements or application forms to the appropriate ACF Regional Youth Contacts listed in Part VI, Appendix E, or to the Administration on Children, Youth and Families in Washington, D.C. (see address at the beginning of this announcement). This assistance is available to anyone who requests an application kit.

B. Application Requirements

To be considered for a grant, each application must be submitted on the forms provided at the end of this announcement (Part VI, Section I) and in accordance with the guidance provided below. The application must be signed by an individual authorized both to act for the applicant agency and to assume responsibility for the obligations imposed by the terms and conditions of the grant award.

If more than one agency is involved in submitting a single application, one entity must be identified as the applicant organization which will have legal responsibility for the grant.

C. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995, Pub.L. 104–13, the Department is required to submit to the Office of Management and Budget (OMB) for review and approval any reporting and record-keeping requirements or program announcements. This program announcement meets all information collection requirements approved for ACF grant applications under OMB Control Number 0970–0139.

Required form	OMB no.
SF 424 series of forms.	OMB No. 0970–0139.

D. Notification Under Executive Order 12372

This program is covered under Executive Order (E.O.) 12372, ''Intergovernmental Review of Federal Programs,'' and 45 CFR part 100, ''Intergovernmental Review of Department of Health and Human Services Programs and Activities.'' Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

As of February, 1996, the following jurisdictions have elected not to participate in the Executive Order Process. Applicants from these jurisdictions or for projects administered by Federally-recognized Indian tribes need take no action in regard to E.O. 12372: Alabama, Alaska, American Samoa, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, Oklahoma, Oregon, Palau, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, and Washington. All remaining jurisdictions participate in the Executive Order process and have established Single Points of Contacts (SPOCS). Applicants from participating jurisdictions should contact their SPOC as soon as possible to alert them to the prospective application and receive any necessary instructions. Applicants must submit any required material to the SPOCs as early as possible so that the program office can obtain and review SPOC comments as part of the award process. The applicant must submit all required materials, if any, to the SPOC and indicate the date of this submittal (or date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline date to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCS are requested to clearly differentiate between mere advisory comments and those official State process recommendations which they intend to trigger the ''accommodate or explain'' rule.

When comments are submitted directly to ACF, they must be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Mail Stop 6C–462, Washington, DC 20447.

A list of the Single Points of Contact for each State and Territory is included as Part VI, Appendix G, of this announcement.

E. Availability of Forms and Other Materials

A copy of the forms that must be submitted as part of each application for a runaway and homeless youth grant, and instructions for completing the application, are provided in Part VI, Appendix I. The Basic Center Program Performance Standards as well as descriptions of the National Runaway Switchboard and the National Clearinghouse on Families and Youth are presented in Part VI, Appendices A, B and C. Addresses of the State Single Points of Contact (SPOCs) to which applicants must submit review copies of their proposals are listed in Part VI, Appendix G.

Legislation referenced in Part I, section B, of this announcement may be found in major public libraries and at the ACF Regional Offices listed in Part VI, Appendix E, at the end of this announcement.

Additional copies of this announcement may be obtained by calling the telephone number listed at the beginning of this announcement. Further general information may be obtained from the Training and Technical Assistance Providers listed in Part VI, Appendix F.

F. Application Consideration

All applications which are complete and conform to the requirements of this program announcement will be subject to a competitive review and evaluation process against the specific criteria outlined in Part II of this announcement and the specific Minimum Requirements for Project Design contained in Part III of this announcement. This review will be conducted in Washington, DC, by teams of non-Federal experts knowledgeable in the areas of youth development and human service programs. Applications for Basic Center Program grants will be reviewed competitively only with other applications from the same State. Applications for Street Outreach Program grants and for Transitional Living Program grants will be reviewed as part of a national competition.

Non-Federal experts will review the applications based on the Evaluation Criteria listed in Part II of this announcement and the specific Minimum Requirements for Project Design contained in Part III of this announcement and will assign a score to each application. Both Central and Regional office staff will conduct administrative reviews of the applications and the results of the competitive reviews and will select those applications to be recommended for funding to the Commissioner, ACYF.

The Commissioner will make the final selection of the applicants to be funded. As required by runaway and homeless youth legislation, priority for funding will be given to agencies with demonstrated experience in providing direct services to runaway and homeless youth. However, current grantees ending three-year funding periods, and applying as new applicants for funds under this program announcement, are reminded that, when the current project period ends, so does the funding agency's obligation for future awards.

In addition to scores assigned by non-Federal reviewers and Federal administrative reviews, consideration will be given to adequate geographic distribution of services, and the Commissioner may show preference for applications proposing services in areas that would not otherwise be served. The Commissioner also may elect to consider applicants' past performance in providing services to runaway and homeless youth and also may elect not to fund any applicants having known management, fiscal, reporting (as under the RHYMIS), or other problems which make it unlikely that they would be able to provide effective services.

Awards for Basic Center and for Street Outreach Program Grants will be made by September 30, 1997. Subject to the availability of resources in FY 1998 and the number of acceptable applications received as a result of this program announcement, the Federal government may elect to select recipients for new FY 1998 SOP grant awards out of the pool of Street Outreach Program applications submitted under this program announcement. Awards for Transitional Living Programs will be made after October 1, 1997 when FY 1998 funds are appropriated by Congress.

Successful applicants will be notified through the issuance of a Financial Assistance Award which will set forth the amount of funds granted, the terms and conditions of the grant, the effective date of the grant, the budget period for which initial support will be given, the non-Federal share to be provided, and the total project period for which support is contemplated. Organizations whose applications will not be funded will be notified of that decision in writing by the Commissioner of the Administration on Children, Youth and Families. Every effort will be made to notify all unsuccessful applicants as soon as possible after final decisions are made.

Applicants applying for more than one runaway and homeless youth grant (Basic Center Program (BCP), Transitional Living Program (TLP)) or (Street Outreach Program (SOP)) must submit separate and complete applications for each program. Applications that combine two or more programs in a single proposal will not be reviewed or funded.

Part V. Application Content, Instructions, Assembly, and Submission

A. Content, Instructions, and Assembly of Applications

Each application must contain the following items in the order listed:

1. Application for Federal Assistance (Standard Form 424, REV 4–92) (page i). Follow the instructions in Part VI, Appendix I. In Item 8 of Form 424, check ''New.'' In Item 10 of the 424, clearly identify the *Catalog of Federal Domestic Assistance* Program Number and Title for the program for which funds are being requested (93.623, Basic Center Program for Runaway and Homeless Youth; 93.557, Street Outreach Program for Runaway, Homeless and Street Youth; 93.550, Transitional Living Program for Homeless Youth). In Item 11 of the 424, identify the Program Area and the program name (IIIA: Basic Center Program (BCP), IIIB: Street Outreach Program (SOP) or IIIC: Transitional Living Program (TLP) which the application is addressing.

2. Budget Information (Standard Form 424A, REV 4–92) (pages ii–iii). Follow the instructions in Part VI, Appendix I.

3. Budget Justification (Type on standard size plain white paper) (pages iv–v). Provide breakdowns for major budget categories and justify significant costs. List amounts and sources of all funds, both Federal and non-Federal, that will be used for this project.

4. Project Summary Description (PS–1, one page maximum). Clearly mark this page with the applicant name as shown on item 5 of the SF 424, the program name and the title of the project as shown in item 11 of the SF 424. The summary description should not exceed 300 words.

Care should be taken to produce a summary description which accurately and concisely reflects the application. It should describe the objectives of the project, the approaches to be used and the outcomes expected. The project summary description, together with the information on the SF 424, will constitute the project abstract.

5. Assurances/Certifications. Applicants are required to file an SF 424B, Assurances—Non-Construction Programs and the Certification Regarding Lobbying. Both must be signed and returned with the application. Copies of the assurances/certifications are reprinted at the end of this announcement and should be reproduced, as necessary. A duly authorized representative of the applicant organization must certify that the applicant is in compliance with these assurances/certifications. In addition, applicants must certify their compliance with: (1) Drug-Free Workplace Requirements; (2) Debarment and Other Responsibilities; and (3) Pro-Children Act of 1994 (Certification Regarding Environmental Tobacco Smoke). A signature on the SF 424 indicates compliance with the Drug Free Workplace Requirements, Debarment and Other Responsibilities and Environmental Tobacco Smoke Certifications.

A signature on the application constitutes an assurance that the applicant will comply with the pertinent Departmental regulations contained in 45 CFR Part 74. Applicants must sign and return the Standard Form 424B with their applications.

6. Program Narrative Statement (pages 1 and following; 40 pages maximum, double-spaced). Use the Evaluation Criteria in Part II as a way to organize the Narrative. Be sure to address all the specifics contained in the appropriate

Program Area Description in Part III, especially the information described under Minimum Requirements for Project Design.

The pages of the narrative statement must be numbered and are limited to 40 typed pages, double spaced, printed on only one side, with at least ½ inch margins. Pages over the limit will not be reviewed. In addition, please note that previous attempts by applicants to circumvent space limitations or to exceed page limits by using small print have resulted in negative responses from reviewers because of the difficulty in reviewing the application.

It is in the best interest of the applicants to ensure that the narrative statements are easy to read, logically developed in accordance with evaluation criteria, and adhere to page limitations. In addition, applicants should be mindful of the importance of preparing and submitting applications using language, terms, concepts and descriptions that are generally known both to the runaway and homeless youth and broader youth services field.

7. Organizational Capability Statement (pages OCS–1 and following; 3 pages maximum). Applicants must provide a description (no more than three pages, double-spaced) of how the applicant agency is organized and the types, quantities and costs of services it provides, including services to clients other than runaway and homeless youth. For the prior year, list all contracts with or funds received from juvenile justice, probation and/or welfare agencies. Provide an organizational chart showing any superordinate, parallel, or subordinate agencies to the specific agency that will provide direct services to runaway and homeless youth, and summarize the purposes, clients and overall budgets of these other agencies. If the agency has multiple sites, list these sites, *including addresses, phone numbers and staff contact names, if different than those on the SF 424.* If the agency is a recipient of funds from the Administration on Children, Youth and Families for services to runaway and homeless youth for programs other than that applied for in this application, show how the services supported by these funds are or will be integrated with the existing services.

8. Supporting Documents (pages SD–1 and following). The maximum for supporting documentation is 10 pages, double spaced, exclusive of letters of support or agreement. These documents might include resumes, photocopies of news clippings, evidence of the program's efforts to coordinate youth services at the local level, etc. Documentation over the ten page limit will not be reviewed. Applicants may include as many letters of support or agreement as are appropriate.

B. Application Submission

To be considered for funding, each applicant must submit one signed original and two additional copies of the application, including all attachments, to the application receipt point specified below. The original copy of the application must have original signatures, signed in *black* ink. Each copy must be stapled (back and front) in the upper left corner. All copies of a single application must be submitted in a single package.

Because each application will be duplicated by the government, do not use or include separate covers, binders, clips, tabs, plastic inserts, maps, brochures or any other items that cannot be processed easily on a photocopy machine with an automatic feed. Do not bind, clip, staple, or fasten in any way separate subsections of the application, including supporting documentation. Applicants are advised that the copies of the application submitted, not the original, will be reproduced by the Federal government for review.

The closing dates for receipt of applications for the grant programs contained in this announcement are:

Program	Closing date
BCP	May 2, 1997.
SOP	May 16, 1997.
TLP	May 30, 1997.

Deadlines: Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at the U.S. Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, S.W., Mail Stop 6C–462, Washington, D.C. 20447. Attention: Basic Center Program for Runaway and Homeless Youth; Street Outreach Program for Runaway, Homeless and Street Youth; or Transitional Living Program for Homeless Youth.

Applications handcarried by applicants, applicant couriers, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., at the U.S. Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, ACF Mailroom, 2nd Floor Loading Dock, Aerospace Center, 901 D Street, S.W., Washington, D.C. 20024 between Monday and Friday (excluding Federal Holidays).

ACF cannot accommodate transmission of applications by fax. Therefore, applications faxed to ACF will not be accepted regardless of date or time of submission and time of receipt. Envelopes containing applications must clearly indicate the specific program that the application is addressing: Basic Center Program (BCP); Street Outreach Program (SOP); or Transitional Living Program (TLP).

Late Applications. Applications which do not meet the criteria stated above and are not received by the RECEIPT date are considered late applications. The Administration for Children and Families (ACF) will notify each late applicant that its application will not be considered in the current competition.

Extension of Deadline. The ACF may extend the deadline for all applicants because of acts of God such as earthquakes, floods or hurricanes, etc., or when there is a widespread disruption of the mails. However, if ACF does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicants.

(*Catalog of Federal Domestic Assistance.* Number 93.623, Basic Center Program for Runaway and Homeless Youth; Number 93.557, Street Outreach Program for Runaway, Homeless and Street Youth; and Number 93.550, Transitional Living Program for Homeless Youth.)

Dated: February 27, 1997.

James A. Harrell,

Acting Commissioner, Administration on Children, Youth and Families.

Part VI. Appendices

Appendix A—Basic Center Program Performance Standards

Program Performance Standards

I. Purpose

The Program Performance Standards established by the Bureau for its funded centers relate to the basic program components enumerated in Section 317 of the Runaway and Homeless Youth Act and as further detailed in the Regulations and Program Guidance governing the implementation of the Act. They address the methods and processes by which the needs of runaway and homeless youth and their families are being met, as opposed to the outcome of the services provided on the clients served.

The terms ''program performance standard,'' ''criterion,'' and ''indicators'' are used throughout both the instrument and the instructions. These terms are defined as follows:

Program Performance Standard: The general principle against which a judgment can be made to determine whether a service

or an administrative component has achieved a particular level of attainment.

Criterion: A specific dimension or aspect of a program performance standard which helps to define that standard and which is amenable to direct observation or measurement.

Indicator: The specific documentation which demonstrates whether a criterion (or an aspect of a criterion) is being met and thereby the extent to which a specific aspect of a standard is being met.

Fourteen program performance standards, with related criteria, are established by the Bureau for the projects funded under the Runaway and Homeless Youth Act. Nine of these standards relate to service components (outreach, individual intake process, temporary shelter, individual and group counseling, family counseling, service linkages, aftercare services, recreational programs, and case disposition), and five to administrative functions or activities (staffing and staff development, youth participation, individual client files, ongoing project planning, and board of directors/advisory body).

Although fiscal management is not included as a program performance standard, it is viewed by FYSB as being an essential element in the operation of its funded projects. Therefore, as validation visits are made, the Regional ACF specialist and/or staff from the Office of Fiscal Operations will also review the project's financial management activities.

FYSB views these program performance standards as constituting the minimum standards to which its funded projects should conform. The primary assumption underlying the program performance standards is that the service and administrative components which are encompassed within these standards are integral (but not sufficient in themselves) to a program of services which effectively addresses the crisis and long-term needs of runaway and homeless youth and their families.

The program performance standards are designed to serve as a developmental tool, and are to be employed by both the project staff and the Regional ACF staff specialists in identifying those service and administrative components and activities of individual projects which require strengthening and/or development either through internal action on the part of staff or through the provision of external technical assistance.

III. Program Performance Standards and Criteria

The following constitute the program performance standards and criteria established by the Bureau for its funded centers. Each standard is numbered, and each criterion is listed after a lower case letter.

1. Outreach

The project shall conduct outreach efforts directed towards community agencies, youth and parents.

2. Individual Intake Process

The project shall conduct an individual intake process with each youth seeking services from the project. The individual intake process shall provide for:

a. Direct access to project services on a 24-hour basis.

b. The identification of the emergency service needs of each youth and the provision of the appropriate services either directly or through referrals to community agencies and individuals.

c. An explanation of the services which are available and the requirements for participation, and the securing of a voluntary commitment from each youth to participate in project services prior to admitting the youth into the project.

d. The recording of basic background information on each youth admitted into the project.

e. The assignment of primary responsibility to one staff member for coordinating the services provided to each youth.

f. The contact of the parent(s) or legal guardian of each youth provided temporary shelter within the timeframe established by State law or, in the absence of State requirements, preferably within 24 but within no more than 72 hours following the youth's admission into the project.

3. Temporary Shelter

The project shall provide temporary shelter and food to each youth admitted into the project and requesting such services.

a. Each facility in which temporary shelter is provided shall be in compliance with State and local licensing requirements.

b. Each facility in which temporary shelter is provided shall accommodate no more than 20 youth at any given time.

c. Temporary shelter shall normally not be provided for a period exceeding two weeks during a given stay at the project.

d. Each facility in which temporary shelter is provided shall make at least two meals per day available to youth served on a temporary shelter basis.

e. At least one adult shall be on the premises whenever youth are using the temporary shelter facility.

4. Individual and Group Counseling

The project shall provide individual and/or group counseling to each youth admitted into the project.

a. Individual and/or group counseling shall be available daily to each youth admitted into the project on a temporary shelter basis and requesting such counseling.

b. Individual and/or group counseling shall be available to each youth admitted into the project on a non-residential basis and requesting such counseling.

c. The individual and/or group counseling shall be provided by qualified staff.

5. Family Counseling

The project shall make family counseling available to each parent or legal guardian and youth admitted into the project.

a. Family counseling shall be provided to each parent or legal guardian and youth admitted into the project and requesting such services.

b. The family counseling shall be provided by qualified staff.

6. Service Linkages

The project shall establish and maintain linkages with community agencies and individuals for the provision of those services which are required by youth and/or their families but which are not provided directly by the centers.

a. Arrangements shall be made with community agencies and individuals for the provision of alternative living arrangements, medical services, psychological and/or psychiatric services, and the other assistance required by youth admitted into the project and/or by their families which are not provided directly by the project.

b. Specific efforts shall be conducted by the project directed toward establishing working relationships with law enforcement and other juvenile justice system personnel.

7. Aftercare Services

The project shall provide a continuity of services to all youth served on a temporary shelter basis and/or their families following the termination of such temporary shelter both directly and through referrals to other agencies and individuals.

8. Recreational Program

The project shall provide a recreational-leisure time schedule of activities for youth admitted to the project for residential care.

9. Case Disposition

The project shall determine, on an individual case basis, the disposition of each youth provided temporary shelter, and shall assure the safe arrival of each youth home or to an alternative living arrangement.

a. To the extent feasible, the project shall provide for the active involvement of the youth, the parent(s) or legal guardian, and the staff in determining what living arrangement constitutes the best interest of each youth.

b. The project shall assure the safe arrival of each youth home or to an alternative living arrangement, following the termination of the crisis services provided by the project, by arranging for the transportation of the youth if he/she will be residing within the area served by the project; or by arranging for the meeting and local transportation of the youth at his/her destination if he/she will be residing beyond the area served by the project.

c. The project shall verify the arrival of each youth who is not accompanied home or to an alternative living arrangement by the parent(s) or legal guardian, project staff or other agency staff within 12 hours after his/her scheduled arrival at his/her destination.

10. Staffing and Staff Development

Each center is required to develop and maintain a plan for staffing and staff development.

a. The project shall operate under an affirmative action plan.

b. The project shall maintain a written staffing plan which indicates the number of paid and volunteer staff in each job category.

c. The project shall maintain a written job description for each paid and volunteer staff function which describes both the major tasks to be performed and the qualifications required.

d. The project shall provide training to all paid and volunteer staff (including youth) in both the procedures employed by the project and in specific skill areas as determined by the project.

e. The project shall evaluate the performance of each paid and volunteer staff member on a regular basis.

f. Case supervision sessions, involving relevant project staff, shall be conducted at least weekly to review current cases and the types of counseling and other services which are being provided.

11. Youth Participation

The center shall actively involve youth in the design and delivery of the services provided by the project.

a. Youth shall be involved in the ongoing planning efforts conducted by the project.

b. Youth shall be involved in the delivery of the services provided by the project.

12. Individual Client Files

The project shall maintain an individual file on each youth admitted into the project.

a. The client file maintained on each youth should, at a minimum, include an intake form which minimally contains the basic background information needed by FYSB; counseling notations; information on the services provided both directly and through referrals to community agencies and individuals; disposition data; and, as applicable, any follow-up and evaluation data which are compiled by the center.

b. The file on each client shall be maintained by the project in a secure place and shall not be disclosed without the written permission of the client and his/her parent(s) or legal guardian except to project staff, to the funding agenc(ies) and its (their) contractor(s), and to a court involved in the disposition of criminal charges against the youth.

13. Ongoing Center Planning

The center shall develop a written plan at least annually.

a. At least annually, the project shall review the crisis counseling, temporary shelter, and aftercare needs of the youth in the area served by the center and the existing services which are available to meet these needs.

b. The project shall conduct an ongoing evaluation of the impact of its services on the youth and families it serves.

c. At least annually, the project shall review and revise, as appropriate, its goals, objectives, and activities based upon the data generated through both the review of youth needs and existing services (13a0 and the follow-up evaluations (13b).

d. The project's planning process shall be open to all paid and volunteer staff, youth, and members of the Board of Directors and/or Advisory Body.

14. Board of Directors/Advisory Body (Optional)

It is strongly recommended that the centers have a Board of Directors or Advisory Body.

a. The membership of the project's Board of Directors or Advisory Body shall be composed of a representative cross-section of the community, including youth, parents, and agency representatives.

b. Training shall be provided to the Board of Directors or Advisory Body designed to orient the members to the goals, objectives, and activities of the project.

c. The Board of Directors or Advisory Body shall review and approve the overall goals, objectives, and activities of the project, including the written plan developed under standard 13.

Appendix B—National Runaway Switchboard (National Communications System)

The National Runaway Switchboard—Toll-free: 1–800–621–4000

- Facilitates communication among youth, their families and youth and community-based resources through conference calling services.
- Provides crisis intervention counseling and message delivery services to at-risk youth and their families.
- Provides information and referral services to at-risk youth and their families on youth serving agencies using a computerized national resource directory.
- Conducts an annual conference for local switchboard service providers.

The Switchboard distributes information brochures, posters, a newsletter, and public service announcements. For more information, contact the National Runaway Switchboard, 3080 North Lincoln, Chicago, IL 60657, (312) 880–9860.

Appendix C—National Clearinghouse on Families and Youth

The National Clearinghouse on Families and Youth (NCFY) is a resource for communities interested in developing new and effective strategies for supporting young people and their families. The Family and Youth Services Bureau (FYSB) within the U.S. Department of Health and Human Services, established NCFY to serve as a central information source on family and youth issues. As a national resource for youth service professionals, policymakers and the general public, NCFY offers the following services:

Information Sharing

Through a professionally staffed information line, databases, and special mailings, NCFY actively distributes information about effective program approaches, available resources, and current activities relevant to the family and youth services fields.

Issue Forums

NCFY facilitates FYSB-sponsored forums, bringing together experts in the field to discuss critical issues and emerging trends and develop strategies for improving services to families and youth. NCFY shares forum outcomes with the field.

Materials Development

NCFY produces information on FYSB and its programs, as well as reports on critical issues, best practices, and promising approaches in family and youth services.

Networking

NCFY supports FYSB's efforts to collaborate with other Federal agencies, State and local governments, national organizations, and communities to address the full range of issues facing young people and their families today.

To find out more about the National Clearinghouse on Families and Youth, please call or write: National Clearinghouse on Families and Youth, PO Box 13505, Silver Spring, Maryland 20911–3505, (301) 608–8098, Fax: (301) 608–8721.

Appendix D—Runaway and Homeless Youth Continuation Grantees

The following grantees are expected to receive continuation grants in FY 1997 and are NOT eligible to apply for funds under this announcement.

D.1: Basic Center Programs for Runaway and Homeless Youth Grantees Ineligible for New FY 1997 Funding

Region I

Connecticut

The Bridge Family Center, 90 North Main Street, West Hartford, CT 0006107, Wayne Starkey, (203) 521–8035

Waterbury Youth Services, 95 North Main Street, Waterbury, CT 06702, Kelly Cronin, (203) 573–0264

Council of Churches of Greater Bridgeport, 126 Washington Avenue, Bridgeport, CT 06604, John Cottrell, (203) 334–1121

Quinebaug Valley Youth Service Bureau, P.O. Box 812, N. Grosvenordale, CT 06255, David Johnson, (203) 521–8035

Maine

Youth Alternatives of Southern Maine, 175 Lancaster Street, Portland, Maine 04101, Mike Tarpinian, (207) 874–1175

Youth and Family Services, P.O. Box 502, Skowhegan, ME 04976, Ronald Herbert, (207) 474–8311

Massachusetts

Phaneuf Youth Outreach (Life Resources, Inc.), P.O. Box 749, Brockton, MA 02403, David Kaufer, (508) 584–3855

Concord-Assabet Family and Adolescent Services, 56 Winthrop Street, Concord, MA 01742, Stephen A. Joffe, (508) 371–3006

Youth and Family Support Network, Inc., 75 Fountain Street, Framingham, MA 01701, Eric L. Masi, (508) 879–8900, Ext. 222

L.U.K. Crisis Center, 99 Day Street, Fitchburg, MA 01420, Ernest M. Pletan-Cross, (508) 345–0658

Center for Human Development, Inc., 332 Birnie Avenue, Springfield, MA 01107, James Williams, (413) 733–6624

Riverside Community Health and Retardation, 450 Washington Street, Dedham, MA 02026, Susan Sawyer, (617) 244–4802

New Hampshire

Community Youth Advocates, 36 Tremont Square, Claremont, NH 03743, Rodney Minckler, (603) 543–0427

Child and Family Services, 99 Hanover Street, Manchester, NH 03105, Gail Starr, (603) 558–1920

Vermont

Washington County Youth Service Bureau, P.O. Box 627, Montpelier, VT 05753, Tom Howard, (802) 229–9151

Region II

New Jersey

Atlantic County Div. of Intergenerational Svcs., 201 So. Shore Road, Northfield, NJ 08225, Stephen Bruner, (609) 645–7700, Ext. 4700
Hunterdon Youth Services, 322 Highway 12, Flemington, NJ 08822, Carol Hay-Greene, (908) 782–1246
Anchor House, 482 Centre Street, Trenton, NJ 08611, Judith Hutton, (609) 396–8329
Group Homes of Camden County, 35 South 29th Street, Camden, NJ 08105, Sandra Mengestu, (609) 541–9283
Crossroads, 770 Woodlane Road, Mt. Holly, NJ 08060, Stefanie Schwartz, (609) 261–5400

New York

Schenectady Inner City Ministry, 93 Albany Street, Schenectady, NY 12304, Delores Edmonds-McIntosh, (518) 374–0166
Catholic Charities of the Albany Diocese, 41 West Main Street, Cobleskill, NY 12043, (518) 234–3581
Oneida County Community Action Agency, 303 West Liberty Street, Rome, NY 13440, Treva Wood, (315) 339–5640
Cortland County Community Action Program (Time Out Program), 23 Main Street, Cortland, NY 13045, Jean Rightmire, (607) 753–6781
The Salvation Army, 677 S. Salina Street, Syracuse, NY 13202, Linda M. Wright, (315) 479–1326
The Children's Village, Dobbs Ferry, NY, Mary L. Pulido, (914) 693–0600, Ext. 1212
Catholic Charities of the Roman Catholic Diocese, 1408 Genesee Street, Utica, NY 13502, Kathleen O. Mahoney, (315) 724–3167
Chautauqua Opportunities, 17 West Courtney Street, Dunkirk, NY 14048, Douglas Fricke, (716) 366–3333
Center for Children and Families, 295 Lafayette Street, New York, NY 10012, Teri L. Messian, (718) 526–0722 or (212) 226–3536
Equinox, 214 Lark Street, Albany, NY 12210, Judith Watson, (518) 465–9524
St. Agatha Home, 135 Convent Road, Nanuet, NY 10954, Rosemarie Cristello, (914) 623–3461
Compass House, 370 Linwood Avenue, Buffalo, NY 14209, Janell Wilson, (716) 886–1351
Family of Woodstock, U.P.O. Box 3516, Kingston, NY 12401, Joan Mayer, (914) 679–9240
Huntington Youth Bureau, 423 Park Avenue, Huntington, NY 11743, Paul Lowery, (516) 351–3061
Children's House, Inc., 100 E. Old Country Road, Mineola, NY 11501, Gerard McCaffery, (516) 746–0350
YWCA of Binghamton/Broome County, 80 Hawley Street Binghamton, NY 13901, Saraann Delafield, (607) 772–0340
Emergency Housing Group, 141 Monhagen Avenue, Middletown, NY 10940, John Harper, (914) 343–7115
Oswego County Opportunities, Inc., 223 Oneida Street, Fulton, NY 13069, Janette Reshick, (315) 698–4717

Puerto Rico

Centros Sor Isolina Ferre, Box 213, Playa Station, Ponce, PR 00734, Sister Rosita Bauza, (809) 843–1910
Capacitate Instituto de Educacion Novedosa, PO. Box 3531, Guaynabo, PR, Edgardo I. Garcia, (787) 792–6981
Cruzalina Home, Box 18681, Gurabo, PR 00778, Carlos Carrasquillo, (809) 737–4611

Region III

Delaware

Child, Inc., 507 Philadelphia Avenue, Wilmington, DE 19809, Linda Weinman, (302) 762–8989

District of Columbia

Latin American Youth Center, 3045—15th Street, NW., Washington, DC. 20009, Lori Kaplan, (202) 483–1140

Maryland

St. Mary's County Board of County Commissioners, PO. Box 653, Leonardtown, MD 20650, Kathleen O. O'Brien, (301) 475–4464
Local Management Board of Anne Arundel County, 2666 Riva Road, Annapolis, MD 21401, Linda Skreptack, (401) 222–7420

Pennsylvania

Youth Services of Bucks County, 118–120 S. Bellevue Ave., Penndel, PA 19047, Roger Dawson, (215) 752–7050
Catholic Charities, 4800 Union Deposit Road, Harrisburg, PA 17105, Tom D'Annunzio, (717) 657–4804
Three Rivers Youth, 2039 Termon Avenue, Pittsburgh, PA 15212, David Droppa, (412) 766–2215
Catholic Social Services, 33 E. Northhampton St., Wilkes-Barre, PA 18701, Thomas Cherry, (717) 824–5766
Baptist Children's Services, 373 East Main Street, Collegville, PA 19426, Deborah Furst, (610) 489–0395
Voyage House, 1431 Lombard Street, Philadelphia, PA 19146, Susan Pursch, (215) 545–2910
Boys Club and Girls Club of Lancaster, P.O. Box 104, Lancaster, PA 17608, George Custer, (717) 392–6343

Virginia

Seton House, Inc., 642 North Lynnhaven Road, Virginia Beach, VA 23452, Kathryn R. Jeffries, (804) 498–4673
Children, Youth and Family Services, 116 West Jefferson St., Charlottesville, VA 22902, Catherine J. Bodkin, (804) 296–4118
Family and Children's Services, 1518 Willow Lawn Drive, Richmond, VA 23230, Richard J. Lung, (804) 282–4255
Volunteer Emergency Families for Children, 9840–D Midlothian Tpk., Richmond, VA 23235, Anne Earle, (804) 560–9618
Project Safe Place of Hampton Roads, Inc., P.O. Box 3531, Virginia Beach, VA 23454, Benjamin Fuller, (804) 431–2627
City of Roanoke, 4350 Coyner Spring Road, Roanoke, VA 24012, James O'Hare, (703) 977–3330

West Virginia

Southwestern Community Action Council, Inc. (Time Out Youth Srvcs.), 540–5th Avenue, Huntington, WV 25701, Pamela Dickens-Rush, (304) 525–7161
Daymark (Patchwork), 1598–C Washington St., E., Charleston, WV 25311, Vicki Pleasant, (304) 340–3670

Region IV

Alabama

Group Homes, Inc., 1426 S. Court Street, Montgomery, AL 36104, Mark I. Holbrook, (334) 834–5512
Thirteenth Place, Inc., 405 South 12th Street, Gadsden, AL 35901, Alan Bates, (205) 547–8971

Florida

Crosswinds Youth Services, Inc., P.O. Box 540625, Merritt Island, FL 32954, Jan Lokay, (305) 452–8988
Children's Home Society, 3600 Broadway, W. Palm Beach, FL 32202, Allison F. Metcalf, (404) 844–9802
Family Resources, Inc. (Residential South), P.O. Box 13087, St. Petersburg, FL 33733, Jane Harper, (813) 341–2200
Lutheran Ministries (Gulf Coast Youth and Family Services), 3507 Frontage Road, Tampa, FL 33607, Beth A. Deck, (904) 453–2772
Youth and Family Alternatives, 5400 Bethlehem Road, Mulberry, FL 33860, Kenneth Conley, (941) 428–8400
Capital City Youth Services, 2407 Roberts Avenue, Tallahassee, FL 32310, Stacy Gromatski, (904) 576–6000
Youth and Family Alternatives, 7524 Plathe Road, New Port Richey, FL 34653, Richard Hess, (813) 841–4184
Child/Family Counseling Program, 207 Each Place, Tampa, FL 33606, Barry Drew, (813) 272–6606
Arnett House, P.O. Box 70212, Ocala, FL 34470, Patricia Pogue, (904) 622–4432
Family Resources, Inc. (Youth and Family Connection), P.O. Box 13087, St. Petersburg, FL 33733, Jane Harper, (813) 893–1150
Florida Keys Children's Shelter, 2221 Patterson Avenue, Key West, FL 33040, William Woolf, (305) 294–4202
Youth Crisis Center, 7007 Beach Boulevard, Jacksonville, FL 32216, Tom Patania, (904) 720–0002
The Village South, Inc., 3180 Biscayne Boulevard, Miami, FL 33137, Valera Jackson, (305) 573–3784
Act Corporation, 1220 Willis Avenue, Daytona Beach, FL 32114, Becky Anderson, (904) 947–3291

Georgia

The Alcove, 507 East Church Street, Monroe, GA 30655, Kristen O. Harrison, (770) 267–9156
Safe Harbor Children's Shelter, PO Box 1313, Brunswick, GA 31521, Kate Minnock, (912) 267–6000
Atlernate Life Paths Program, 827 Pryor Street, Atlanta, GA 30315, Camellia Moore, (404) 688–1002
Athens Regional Attention Home, 490 Pulaski Street, Athens, GA 30601, Sharon Smith, (404) 548–5893
Marshlands Foundation, PO Box 13866, Savannah, GA 31416, Kathy Fabozzi, (912) 234–4048
Cobb County Children's Center, 2221 Austell Road, Marietta, GA 30060, Ellen McCarty, (404) 333–0887

Kentucky

Brighton Center, Inc., PO Box 325, Newport, KY 41072, Ginger Ward, (606) 581–1111

Mississippi

Catholic Charities (Our House), PO Box 2248, Jackson, M 39225–2248, Gayle Watts, (601) 355–8634
Mississippi Children's Home, PO Box 1078, Jackson, MS 39215, Christopher Cherney, (601) 352–7784

North Carolina

Youth Focus, Inc., 304 W. Fisher Avenue, Greensboro, NC 27401, Charles Hodierne, (901) 274–5909
Lee County Youth Services, PO Box 57, Sanford, NC 27331–0057, Randell, K. Woodruff, (919) 774–8404
With Friends, Inc., PO Box 971, Belmont, NC 28012, Patricia A. Krikorian, (704) 825–3150
The Relatives, 1100 East Boulevard, Charlotte, NC 28203, Jo Ann Greyer, (704) 335–0203
Mountain Youth Resources, 8 Ridgeway Street, Sylva, NC 28779, Elizabeth Chambers, (704) 586–8958
Coastal Horizons Center, 721 Market Street, Wilmington, NC 28401, Margaret Weller-Stargell, (910) 343–0145
Tuscarora Tribe, PO Box 8, Pembroke, NC 28372, Robert Locklear, (919) 521–1861

South Carolina

Dept. of Juvenile Justice (Crossroads), 4900 Broad River Road, Columbia, SC 29221, Brenda A. Nelson, (803) 740–6148
Dept. of Juvenile Justice (Greenhouse), PO Box 7367, Columbia, SC 29202, Nancy M. Kuhl, (803) 896–9117
Sea Haven, Inc., N. Myrtle Beach, SC

Tennessee

Child and Family Services, 901 E. Summit Hill Dr., Knoxville, TN 37915, Mark Wolfe, (423) 523–2698
Hamilton County Govt. (Gardner House), 317 Oak Street, Chattanooga, TN 37403, Judi Byrd, (423) 209–6833
The Family Link, PO Box 40437, Memphis, TN 38174, Marian Carruth, (901) 725–7270
Central Appalachia Services, PO Box 809, Kingsport, TN 37662, Ronald E. Harrington, (423) 578–3905
Oasis Center, 1221 16th Ave., South, Nashville, TN 37212, Liz Fey, (615) 327–4455

Region V

Illinois

Youth Outreach Services, 6417 W. Irving Park Road, Chicago, IL 60634, Rick Velasquez, (312) 777–7112
The Night Ministry, 1218 West Addison Street, Chicago, IL 60613, Steven Wakefield, (312) 935–8300
Youth Attention Center, PO Box 606, Jacksonville, IL 62651, Jerome Noble, (217) 245–6000
Hoyleton Youth and Family Services, 8787 State Street, E. St. Louis, IL 62203, Shelly Byndom, (618) 398–0900
Youth Service Bureau, 2901 Normandy Road, Springfield, IL 62703, Kaywin Davis, (217) 529–8300
Children's Home and Aid Society, 1819 South Neil Street, Champaign, IL 61820, Ronald Stuyvesant, (217) 359–8815
McHenry County Youth Service, 101 S. Jefferson Street, Woodstock, IL 60098, Susan Krause, (815) 338–7360
Franklin-Williamson Human Services, 902 West Main Street, W. Frankfort, IL 62896, Peggy Falcone, (618) 937–6483
Youth Service Network, 2130 N. Knoxville Avenue, Peoria, IL 61603, Tony Frank, (309) 685–1047
Omni Youth Services, 1111 West Lake Cook Road, Buffalo Grove, IL 60089, Dennis Depcik, (708) 537–6878

Indiana

Youth Service Bureau of St. Joseph County, 2222 Lincoln Way West, South Bend, IN 46628, William J. Monahan, (219) 235–5517
Stopover, Inc., 2236 E. 10th Street, Indianapolis, IN 46201, Elizabeth Malone, (317) 635–9301
Clark County Youth Shelter, 118 East Chestnut Street, Jeffersonville, IN 47130, Candice Chaney Barksdale, (812) 284–5229
Indiana Juvenile Justice Task Force, 1800 N. Meridian, Indianapolis, IN 46202, Laurel Elliott, (317) 926–6100
Children's Bureau, 615 North Alabama, Indianapolis, IN 46204, (317) 634–5050

Michigan

Comprehensive Youth Services (The Harbor), 3061 Commerce Drive, Port Huron, MI 48060, Sally Currie, (313) 385–7010
Saginaw County Youth Council, P.O. Box 3191, Saginaw, MI 48605, Ronald Spess, (517) 752–5175
Northeast Michigan Community Service Agency, 2373 Gordon Road, Alpena, MI 49707, John Swise, (517) 356–3474
MetroMatrix Human Srvcs. (Off The Streets), 10612 E. Jefferson, Detroit, MI 48201, Kenneth A. Jones, (313) 824–0499
Arbor Circle Corp., 1115 Ball Avenue, NE., Grand Rapids, MI 49505, Nancy Ayers, (616) 451–3001
Ozone House, 608 N. Main Street, Ann Arbor, MI 48104, Tanya Hilgendorf, (313) 662–2265
Every Woman's Place, 425 W. Western Avenue, Muskegon, MI 49440, Mary MacDonald, (616) 726–4493
Bethany Christian Services, 6995 W. 48th Street, Fremont, MI 49412, David M. Glerum, (616) 924–3390
Third Level Crisis Intervention Center, 1022 East Front Street, Traverse City, MI 49685, Gail Heath, (616) 922–4802
Comprehensive Youth Services (Macomb Co. Youth Interim Care Facility), Two Crocker Boulevard, Mt. Clemens, MI 48043, Joanne Smyth, (313) 463–7079
Youth Living Centers, 30000 Hively, Inkster, MI 48141, Linda Connolly, (313) 563–5005
Crisis Center (Listening Ear), 107 E. Illinois, Mt. Pleasant, MI 48804, Donald Schuster, (517) 772–2918
Lutheran Social Services of WI and Upper MI, 135 West Washington St., Marquette, MI 49855, Nancy Gauchey, (906) 225–5437
Link Crisis Intervention Center, 2002 South State Street, St. Joseph, MI 49085, Richard Pahl, (616) 983–5465

Minnesota

Evergreen House, 622 Mississippi Avenue, Bemidji, MN 56601 Cheryl Byers, (218) 751–4332
Ain Dah Yung Shelter (Our Home), 1089 Portland Avenue, St. Paul, MN 55104, Gabrielle Strong, (612) 227–4184
Lutheran Social Services, 600 Ordean Street, Duluth, MN 55808, John Moline, (218) 626–2726
The Bridge, 2200 Emerson Avenue S., Minneapolis, MN 55405, Thomas Sawyer, (612) 377–8800
Lutheran Social Services (Crossroads), 565 Dunnell Drive, Owatonna, MN 55060, Mike Ducharme (507) 455–3863
St. Paul Youth Service Bureau, Inc., 1147 Arcade Street, St. Paul MN 55106, Nancy LeTourneau, (612) 771–1301

Ohio

Children's and Family Service, 535 Marmion Avenue, Youngstown, OH 44502, Jacqueline Scott Rogers, (216) 782–5664
Council on Rural Service Programs, 116 E. Third Street, Greenville, OH 45331, Shirley Hathaway, (513) 548–8002
Center for Children and Youth Services, 42707 North Ridge Road, Elyria, OH 44035, David A. Cummings, (216) 324–6113
Huckleberry House, 1421 Hamlet Street, Columbus, OH 43201 Douglas McCoard, (614) 294–8097
Southern Consortium for Behaviorial Healthcare, 7990 Dairy Lane, Athens, OH 45701, Steven Trout, (614) 593–8293
Shelter Care, Inc. (Save Landing Youth Shelter), 680 East Market Street, Akron, OH 44304, Kathleen Stevenson, (216) 376–4200

Wisconsin

Crossroad Runaway Program, 279 S. 17th Avenue, West Bend, WI 53095, Dan Laurent, (414) 338–1991
The Counseling Center of Milwaukee (Pathfinders), 2038 N. Bartlett Avenue, Milwaukee, WI 53202, Linda Austin, (414) 271–2565
Briarpatch, 512 E. Washington Avenue, Madison, WI 53703, Beth Hovind, (608) 251–6211
Lutheran Social Services, 1337 North Taylor Drive, Sheboygan, WI 53081, Merry Klemme, (414) 458–8381

Region VI

Arkansas

Comprehensive Juvenile Services, 1606 South ''J'' Street, Fort Smith, AR 72901, Jerry Robertson, (501) 785–4031
Youth Bridge, P.O. Box 668, Fayetteville, AR 72702, Scott Linebaugh, (501) 521–1532

Louisiana

New Horizons Youth Service Bureau, 47257 River Road, Hammond, LA 70401, Jeanne Voorhees, (504) 345–1171
Education Treatment Council, P.O. Box 864 Lake Charles, LA Martha Parnell, (318) 433–1062
Johnny Gray Jones Regional Youth Shelter, 4815 Shed Road, Bossier City, LA 71111, Dennis Woodward, (318) 965–2328

New Mexico

Youth Development, 6301 Central N.W., Albuquerque, NM 87105, Augustine C. Baca, (505) 831–6038
City of Aztec, 201 W. Chaco, Aztec, NM 87410, Debi Lee, (505) 334–9456
A New Day, 2720–A Carlisle, NE., Albuquerque, NM 87110, Jeffrey Burrows, (505) 881–5228

Oklahoma

Youth Services of Oklahoma County, 201 NE 50th Street, Oklahoma City, OK 73105, Ken Young, (405) 235–7537
Payne County Youth Services, 222 W. 12th, Stillwater, OK 74076, John Bracken, (405) 377–3380
Youth and Family Services of Canadian County, 2404 Sunset Drive, El Reno, OK 73036, Leslie Sparks, (405) 262–6555
Youth Services for Stephens County, PO Box 1603, Duncan, OK 73534, John Herdt, (405) 255–8800
Youth Services of Tulsa, 302 South Cheyenne, Tulsa, OK 74103, Sharon Terry, (918) 582–0061
Cherokee Nation Youth Shelter, PO Box 948, Tahlequah, OK 74465, Linda Vann, (918) 456–0671

Texas

El Paso Center for Children, 3700 Altura, El Paso, TX 79930, Sandy Rioux, (915) 565–8361
YMCA of Dallas, 601 N. Akard Street, Dallas, TX 75201, Tom Boyer, (214) 880–9622
The Bridge Association, 115 West Broadway, Fort Worth, TX 76104, Cindy Honey, (817) 332–8317
Central Texas Youth Services Bureau (Project Option), 701 Parmer Street, PO Box 185, Killeen, TX 76540, Keith Wallace, (817) 939–3466
Harris County Children's Protective Services (Chimney Rock Center), 6425 Chimney Rock Road, Houston, TX 77081, Phyllis McFarland, (713) 664–5701
Roy Maas' Youth Alternatives (The Bridge), 3103 West Avenue, San Antonio, TX 78213, Lori Ratcliff, (210) 340–8077
George Gervin Youth Center, 6903 Sunbelt Drive South, San Antonio, TX 78218, Barbara D. Hawkins, (210) 804–1786
Catholic Family Services, 102 Avenue J, Lubbock, TX 79401, Stephen Hay, (806) 765–8475
Comal County Juvenile Residential Supervision, 1414 W. San Antonio St., New Braunfels, TX 78130, Kyle Barrington, (210) 629–6571
Stop Child Abuse and Neglect, 1208 Laredo Street, Laredo, TX 78040, Isela Dabdoub, (210) 724–3177
Children's Aid Society, 1101—30th Street, Wichita Falls, TX 76302, Patricia King, (817) 322–3141
DePelchin Children's Center, 100 Sandman, Houston, TX 77007, Jane Harding, (713) 802–7733
East Texas Open Door, 415 West Burleson Street, Marshall, TX 75670, Therrel Brown, (903) 935–2099
Youth and Family Counseling Services, PO Box 1611, Angleton, TX 77516, Diana Fleming, (409) 849–5711

Region VII

Iowa

United Action for Youth, 410 Iowa Avenue, Iowa City, IA 52240, Jim Swaim, (319) 338–7518
Foundation II, 1540 Second Avenue, Cedar Rapids, IA 52403, Steve Meyer, (319) 362–1170
Youth and Shelter Services, 232½ Main Street, Ames, IA 50010, George Belitsos, (515) 233–3141

Kansas

United Methodist Youthville, 900 W. Broadway, Newton, KS 67144, Karen L. Baker, (316) 283–1950, Ext. 305
Temporary Lodging for Children, 480 S. Rogers Road, Olathe, KS 66063, Sherry Love, (913) 764–2887
Kaw Valley Center, 4300 Brenner Drive, Kansas City, KS 66104, Wayne Sims, (913) 334–0294

Missouri

Synergy House, P.O. Box 12181, Parkville, MO 64152, Carol Kuhns, (816) 587–4100
Manager's of Roman Catholic Asylums of St. Louis (Marian Hall), 325 North Newstead Ave., St. Louis, MO 63108, Patricia Johnson, (314) 726–3339

Nebraska

Youth Emergency Services, 3001 Douglas Twin Towers, Omaha, NE 68131, Frank J. Velinsky, (402) 345–5187
Panhandle Community Services, 3350 10th Street, Gering, NE 69341, Katie Fattig, (308) 635–3089
Youth Service System, 770 North Cotner Blvd., Lincoln, NE 68505, James Blue, (402) 466–6181

Region VIII

Colorado

Urban Peak, 1577 Clarkson Street, Denver, CO 80218, Roxane White, (303) 863–7325
Pueblo Youth Service Bureau, 112 West D Street, Pueblo, CO 81003, Molly Melendez, (719) 542–5161
Volunteers of America, 1865 Larimer Street, Denver, CO 80202, Dianna Kunz, (303) 297–0408
Ute Mountain Ute Nation (Sunrise Youth Shelter), P.O. Box 56, Towaoc, CO 81334, James Dorsey, (303) 565–9634
Larimer County Youth S.A.F.E., 303 W. Skyway Drive, Fort Collins, CO 80525, Robert Gaines, (907) 498–6492
Human Services, Inc., 899 Logan Street, Denver, CO 80203, Christine Gerhard, (303) 429–4440

Montana

Mountain Plains Youth Services, 709 East Third, Anaconda, MT 59711, Linda Wood, (701) 255–7229

North Dakota

Youthworks, 221 West Rosser Avenue, Bismarck, ND 58501, Douglas Herzog, (701) 255–7229

South Dakota

Rosebud Sioux Tribe, P.O. Box 430, Rosebud, SD 57570, Rose Chasing Hawk-Dubray, (605) 747–2258
Oglala Sioux Tribe, P.O. Box H, Pine Ridge, SD 57770, Roberta Ecoffey, (605) 867–1520
Turning Point, 1401 W. 51st., Sioux Falls, SD 57105, Pamela Bollinger, (605) 334–1414

Utah

Dept. of Human Services, 120 North 200 West, Salt Lake City, UT 84103, Cosette Mills, (801) 538–4100

Wyoming

Mountain Plains Youth Services, 11 Minter Lane, Riverton, WY 82501, Linda Wood, (701) 255–7229
Attention Homes, Inc., P.O. Box 687, Cheyenne, WY 82003, Terry Clarke, (307) 778–7832

Region IX

Arizona

Children's Village of Yuma, 257 South Third Avenue, Yuma, AZ 85364, Judy Smith, (602) 783–2427
Northland Family Help Center, 2501 N. Fourth Street, Flagstaff, AZ 86004, Kay Doggett, (520) 774–4503
Out Town Family Center, P.O. Box 26665, Tucson, AZ 85726, Susan Krahe-Eggleston, (520) 323–1708

California

Center for Human Services, 1700 McHenry Village Way, Modesto, CA 95350, Linda Kovacs, (209) 536–1440
Community Human Services, P.O. Box 3076, Monterey, CA 93942, Robin McCrae, (408) 899–4131
Youth and Family Assistance, 609 Price Avenue, #205, Redwood City, CA 94063, Richard Gordon, (415) 366–8401
Klein Bottle, 401 N. Milpas, Santa Barbara, CA 93103, David Edelman, (805) 564–7830
1736 Family Crisis Center, 103 W. Torrance Blvd., Redondo Beach, CA 90277, Carol A. Adelkoff, (310) 372–4674
Butte County Department of Mental Health, 584 Rio Lindo Avenue, Chico, CA 95926, Michael Clark, (916) 891–2850
City of Oceanside, 300 N. Coast Highway, Oceanside, CA 92054, Doris Ahrens, (619) 966–4608
Volunteers of America, 3600 Wilshire Blvd., Los Angeles, CA 90010, Bob Pratt, (213) 389–1500
Los Angeles Gay and Lesbian Community Service Center, 1625 N. Schrader Blvd., Los Angeles, CA 90028, Darryl Cummings, (213) 993–7600
Interface Community, 1305 Del Norte Road, Camarillo, CA 93010, Martha Bolton, (805) 371–5707
Bill Wilson Marriage and Family Counseling Ctr., 3490 The Alameda, Santa Clara, CA 95050, Sparky Harlan, (408) 243–0222
Youth Advocates, Inc., 3310 Geary Boulevard, San Francisco, CA 94118, Michelle Magee, (415) 668–2622
Larkin Street Services, 1044 Larkin Street, San Francisco, CA 94109, Cassandra Benjamin, (415) 749–3840
Tahoe Youth and Family Services, 1021 Fremont Avenue, S. Lake Tahoe, CA 96150, Teri Mundt, (916) 541–2445
Diogenes Youth Services, 8912 Volunteer Lane, Sacramento, CA 95826, James Bueto, (916) 368–3350
San Diego Youth Involvement, P.O. Box 95, Lemon Grove, CA 91946, Hura Murphy, (619) 463–7800

Central City Hospitality House, 290 Turk Street, San Francisco, CA 94102, Robert Foley, (415) 749–2117
South Bay Community Services, 315 Fourth Avenue, Chula Vista, CA 91910, Kathryn Lembo, (619) 420–3620
Casa Youth Shelter, 10911 Reagan Street, Los Alamitos, CA 90720, Luciann Maulhardt, (310) 594–6825
YMCA of San Diego County, 4715 Viewridge Avenue, San Diego, CA 92123, Laura Mustari, (619) 292–4034
Emergency Housing Consortium, P.O. Box 2346, San Jose, CA 95109, Barry Del Buono, (408) 291–5445
Xanthos, Inc., 1335 Park Avenue, Alameda, CA 94501, Jon Schiller, (510) 522–8363
Youth and Family Assistance, 609 Price Avenue, Redwood City, CA 94063, Richard Gordon, (415) 366–8401
Mendocino County Youth Project, 202 South State Street, Ukiah, CA 95482, Arlene Rose, (707) 463–4915
Father Flanagan's Boys Town of Southern California, 23832 Rockfield Blvd., Lake Forest, CA 92630, Michael Riley, (714) 581–2281
Center for Positive Prevention Alternatives, 729 N. California Street, Stockton, CA 95202, Linda Mascarenas, (209) 948–4357
Northern California Family Center, 2244 Pacheco Boulevard, Martinez, CA 94553, Thomas Fulton, (510) 370–1990
Life Steps Foundation, 1107 Johnson Avenue, San Luis Obispo, CA 93401, Sharon Fredrick, (805) 549–0150
Santa Cruz Community Counseling Center, 195–A Harvey West Blvd., Santa Cruz, CA 95060, Walter Guzman, (408) 425–0771

Nevada

The Children's Cabinet, 1090 South Rock Blvd., Reno, NV 90502, Sarah Longaker, (702) 856–6200

Guam

Sanctuary, Inc., PO Box 21030, GMF, Barrigada, GU 96921, Stephanie Smith, 011 (617) 734–2537

CNMI

Commonwealth of the Marianas/DYS, PO Box 1000, Saipan, MP 96950, Margarita Olopai-Taitano, 011 (670) 322–9366

Region X

Alaska

Fairbanks Native Association, 201 First Avenue, Fairbanks, AK 99701, Florence Loucks, (907) 455–4725
Alaska Youth and Parent Foundation, 3745 Community Park Loop, Anchorage, AK 99508, Sheila Gaddis, (907) 274–0344

Idaho

Hays Shelter Home, 1602 West Franklin St., Boise, ID 83702, Tracy Everson, (208) 336–1066
Bannock Youth Foundation, P.O. Box 2072, Pocatello, ID 83206, Stephen Mead, (208) 234–1122

Oregon

Northwest Human Services, 681 Center, NE., Salem, OR 97301, Mary Beth Thompson, (503) 588–5828
J Bar J Ranch, 62895 Hamby Road, Bend, OR 97701, Craig Christiansen, (503) 389–1409
The Boys and Girls Aid Society, 018 SW Boundary Court, Portland, OR 97201, Theresa Thorson, (503) 222–9661
Youthworks, Inc., 1032 West Main Street, Medford, OR 97501, Steven Groveman, (503) 779–2393

Washington

Youth Help Association, 522 West Riverside, Spokane, WA 99201, Bernadine Spalla, (509) 455–5226, Ext. 109
Auburn Youth Resources, 816 F Street, SE, Auburn, WA 98002, Richard Brugger, (206) 939–2202
Pierce County Alliance, 510 Tacoma Avenue South, Tacoma, WA 98402, Terree Schmidt-Whelan, (206) 502–5404
The Housing Authority of Vancouver, 500 Omaha Way, Vancouver, WA 98661, Richard Sample, (360) 694–2501
YouthCare, 190 Queen Anne Avenue N., Seattle, WA 98109, Victoria Wagner, (206) 282–1288

D.2: Street Outreach Program for Runaway and Homeless Youth Grantees Ineligible for New FY 1997 Funding

Region I

New Hampshire

Child and Family Services, 99 Hanover Street, Gail Starr, Manchester, NH 03105, (603) 558–1920

Vermont

Washington County Youth Services, PO Box 627, Montpelier, VT 05753, Tom Howard, (802) 229–9151

Region II

New Jersey

Crossroads, 770 Woodlane Road, Mt. Holly, NJ 08060, Stefanie Schwartz, (609) 261–5400

New York

Equinox, 306 Central Avenue, Albany, NY 12206, Laurel Thatcher, (518) 465–9524
Oswego County Opportunities, 223 Oneida Street, Fulton, NY 13069, Janette Reshick, (315) 598–4717
The Salvation Army, 677 S. Salina Street, Syracuse, NY 13202, Linda M. Wright, (315) 479–1326
Center for Children and Families, 295 Lafayette Street, New York, NY 10012, Teri L. Messian, (718) 526–0722

Region III

Pennsylvania

Three Rivers Youth, 2039 Termon Avenue, Pittsburgh, PA 15212, David Droppa, (412) 766–2215
Catholic Social Services, 33 E. Northhampton St., Wilkes-Barre, PA 18701, Thomas Cherry, (717) 824–5766
Youth Services of Bucks County, 118–120 S. Bellevue Ave., Penndel, PA 19047, Roger Dawson, (215) 752–7050

West Virginia

Daymark (Patchwork), 1598–C Washington St., E., Charleston, WV 25311, Vicki Pleasant, (304) 340–3670

Region IV

Florida

Florida Keys Children's Shelter, 2221 Patterson Avenue, Key West, FL 33040, William Woolf, (305) 294–4202
Youth Crisis Center, 7007 Beach Boulevard, Jacksonville, FL 32216, Tom Patania, (904) 720–0002
Crosswinds Youth Services, PO Box 540625, Merritt Island, FL 32954, Jan Lokay, (305) 452–8988

Kentucky

Brighton Center, PO Box 325, Newport, KY 41072, Ginger Ward, (606) 581–1111

North Carolina

Coastal Horizons Center, 721 Market Street, Wilmington, NC 28401, Margaret Weller-Stargell, (910) 343–0145

Tennessee

Oasis Center, 1221—16th Ave., South, Nashville, TN 37212, Liz Fey, (615) 327–4455

Region V

Illinois

Youth Outreach Services, 6417 W. Irving Park Road, Chicago, IL 60634, Rick Velasquez, (312) 777–7112

Indiana

Clark County Youth Shelter, 118 East Chestnut Street, Jeffersonville, IN 47130, Candice Chaney Barksdale, (812) 284–5229

Minnesota

Ain Dah Yung Shelter (Our Home), 1089 Portland Avenue, St. Paul, MN 55104, Gabrielle Strong, (612) 227–4184

Region VI

Arkansas

Youth Bridge, P.O. Box 668, Fayetteville, AR 72702, Scott Linebaugh, (501) 521–1532

Oklahoma

Youth Services of Oklahoma County, 201 N.E. 50th Street, Oklahoma City, OK 73105, Ken Young, (405) 235–7537

Texas

Stop Child Abuse and Neglect, 1208 Laredo Street, Laredo, TX 78040, Isela Dabdoub, (210) 724–3177
The Bridge Association, 115 West Broadway, Ft. Worth, TX 76104, Cindy Honey, (817) 332–8317

Region VII

Iowa

Youth and Shelter Services, 232½ Main Street, Ames, IA 50010, George Belitsos, (515) 233–3141

Nebraska

Youth Service System, 770 North Cotner Blvd., Lincoln, NE 68505, James Blue, (402) 466–6181

Region VIII

Colorado

Urban Peak, 1577 Clarkson Street, Denver, CO 80218, Roxane White, (303) 863–7325

South Dakota

Turning Point, 1401 W. 51st, Sioux Falls, SD 57105, Pamela Bollinger, (605) 334–1414

Region IX

California

Larkin Street Youth Center, 1044 Larkin Street, San Francisco, CA 94109, Anne Stanton, (415) 673–0911

Region X

Alaska

Fairbanks Native Assoc., 201 First Avenue, Fairbanks, AK 99701, Florence Loucks, (907) 455–4725

Idaho

Bannock Youth Foundation, P.O. Box 2072, Pocatello, ID 83206, Stephen Mead, (208) 234–1122

Washington

YouthCare, P.O. Box 9130, Seattle, WA 98109, Victoria Wagner, (206) 282–1288

D.3: Transitional Living Program for Homeless Youth Grantees Ineligible for New FY 1997 Funding

Region I

Connecticut

Hall Neighborhood House, 52 Green Street, Bridgeport, CT 06608, Easter James, (203) 334–3900

Maine

New Beginnings, Inc., 436 Main Street, Lewiston, ME 04240, Robert Rowe, (207) 795–4077

New Hampshire

Child and Family Services, 99 Hanover Street, Manchester, NH 03105, Gail Starr, (603) 558–1920

Vermont

Washington County Youth, P.O. Box 627, Montpelier, VT 05753, Tom Howard, (802) 229–9151

Region II

New Jersey

Anchor House, 482 Centre Street, Trenton, NJ 08611, Judith Hutton, (609) 396–8329

New York

Dutchess County YMCA, 22 Market Street, Poughkeepsie, NY 12601, Folomi Gray, (914) 485–1001

The Salvation Army, 677 S. Salina Street, Syracuse, NY 13202, Linda M. Wright, (315) 479–1326

Region III

District of Columbia

Sasha Bruce Youthwork, 1022 Maryland Ave., NE., Washington, DC 20002, Deborah Shore, (202) 675–9340

Latin American Youth Center, 3045—15th Street, NW., Washington, DC 20009, Lori Kaplan, (202) 483–1140

Pennsylvania

Volunteers of America, 106 South Main Street, Wilkes-Barre, PA 18701, Stephen Bolinski, (717) 825–5261

Virginia

Residential Youth Services, 2701 Cameron Mills Road, Alexandria, VA 22302, Carol Shannon, (703) 548–8334

West Virginia

Southwestern Community Action Council, 650—5th Avenue, Huntington, WV 25701, Pamela Dickens-Rush, (304) 525–7161

Region IV

Florida Sarasota Family YMCA, 1075 S. Euclid Avenue, Sarasota, FL 34237, Carl Weinrich, (941) 955–8194

Kentucky

YMCA Safe Place Services, 1410 South First Street, Louisville, KY 40208, Kevin Connelly, (502) 635–5233

Tennessee

Council for Alcohol and Drug Abuse Services, 207 Spears Avenue, Chattanooga, TN 37405, Bob Millsaps, (423) 756–7644

Oasis Center, 1221—16th Ave., South, Nashville, TN 37212, Liz Fey, (615) 327–4455

Region VI

Illinois

The Harbour, Inc., 1480 Renaissance Drive, Park Ridge, IL 60068, Mary Eichling, (708) 297–8540

Southern Illinois Regional Social Services, 604 East College, Carbondale, IL 62901, Art Zaitz, (618) 457–6703

Teen Living Programs, Inc. (Foundation House), 3179 N. Broadway, Chicago, IL 60657, Vacant, (312) 883–0025

Michigan

Saginaw County Youth Project, P.O. Box 3191, Saginaw, MI 48605, Ronald Spess, (517) 752–5175

Alternatives for Girls, 1950 Trumbull, Detroit, MI 48216, Amanda Good, (313) 496–0938

Ozone House, 608 N. Main Street, Ann Arbor, MI 48104, Tanya Hilgendorf, (313) 662–2265

The Sanctuary, Inc., 1222 South Washington, Royal Oak, MI 48067, Meri Pohutsky, (313) 547–2260

Ohio

Daybreak, 50 Theobald Court, Dayton, OH 45410, Kipra Heermann, (513) 461–1000

Region VI

New Mexico

Youth Shelters and Family Services, PO Box 8135, Santa Fe, NM 87504, Cynthia Gonzales, (505) 983–0586

Texas

The Bridge Association, 115 West Broadway, Ft. Worth, TX 76104, Cindy Honey, (817) 332–8317

Comal County Juvenile Residential Supervision, 1414 W. San Antonio St., New Braunfels, TX 78130, Kyle Barrington, (210) 629–6571

Youth Options, Inc., 3816 S. First Street, Austin, TX 78704, Mitch Weynand, (512) 447–5639

Iowa

Youth and Shelter Services, 232½ Main Street, Ames, IA 50010, George Belitsos, (515) 233–3141

Missouri

Youth In Need, 516 Jefferson, St. Charles, MO 63301, James Braun, (314) 946–0101

Region VIII

Colorado

Volunteers of America, 1865 Larimer Street, Denver, CO 80202, Dianna Kunz, (303) 297–0408

Region IX

Arizona

Our Town Family Center, PO Box 26665, Tucson, AZ 85726, Susan Krahe-Eggleston, (520) 323–1708

California

Center for Positive Prevention Alternatives, 729 N. California Street, Stockton, CA 95202, Linda Mascarenas, (209) 948–4357

Central City Hospitality House, 290 Turk Street, San Francisco, CA 94102, Kate Durham, (415) 749–2117

Appendix E—Administration for Children and Families Regional Office Youth Contacts

Region I:
Bill Jackson, Administration for Children and Families, John F. Kennedy Federal Building, Room 2011, Boston, Massachusetts 02203 (CT, MA, ME, NH, RI, VT), (617) 565–1138

Region II:
Estelle Haferling, Administration for Children and Families, 26 Federal Plaza, Room 4149, New York, NY 10278 (NJ, NY, PR, VI), (212) 264–1329

Region III:
Dick Gilbert, Administration for Children and Families, 3535 Market Street, P.O. Box 13714, Philadelphia, PA 19101 (DC, DE, MD, PA, VA, WV), (215) 596–0369

Region IV:
Viola Flowers, Administration for Children and Families, 101 Marietta Tower, Suite 903, Atlanta, GA 30323 (AL, FL, GA, KY, MS, NC, SC, TN), (404) 331–7210

Region V:
Katie Williams, Administration for Children and Families, 105 West Adams, 23rd Floor, Chicago, IL 60603 (IL, IN, MI, MN, OH, WI), (312) 353–4241

Region VI:
Ralph Rogers, Administration for Children and Families, 1200 Main Tower, 20th Floor, Dallas, TX 75202 (AR, LA, NM, OK, TX), (214) 767–8850

Region VII:
Lynda Bitner, Administration for Children and Families, Federal Office Building, Room 384, 601 East 12th Street, Kansas City, MO 64106 (IA, KS, MO, NE), (816) 426–5401, Ext. 182

Region VIII:
Vicki Wright, Administration for Children and Families, Federal Office Building, 1961 Stout Street, 9th Floor, Denver, CO 80294 (CO, MT, ND, SD, UT, WY), (303) 844–3100, Ext. 361

Region IX:
Al Brown, Administration for Children and Families, 50 United Nations Plaza, San

Francisco, CA 94102 (AZ, CA, HI, NV, American Samoa, Guam, Northern Mariana Islands, Marshall Islands, Federated States of Micronesia, Palau), (415) 437–8437

Region X:

Steve Ice, Administration for Children and Families, 2201 Sixth Avenue, RX 32, Seattle, WA 98121 (AK, ID, OR, WA), (206) 615–2558, Ext. 3075

Appendix F—Training and Technical Assistance Providers

FYSB funds ten regionally based organizations to provide training and technical assistance to programs funded under the Basic Center, Transitional Living and Drug Abuse Prevention Programs, and to other agencies serving runaway and homeless youth.

Each of the training and technical assistance providers offers on-site consultations; regional, State and local conferences; information sharing and skill-based training.

Fore more information, contact the training and technical assistance provider in your region.

New England Consortium for Families and Youth, 25 Stow Road, Boxborough, MA 01719, (508) 266–1998, Contact: Nancy Jackson

Empire State Coalition, 121 Avenue of the Americas, New York, NY 10013, (212) 966–6477, Contact: Margo Hirsch

Mid-Atlantic Network of Youth and Family Services, Inc., 9400 McKnight Road, Pittsburgh, PA 15237, (412) 366–6562, Contact: Nancy Johnson

Southeastern Network of Youth and Family Services, 337 South Milledge Avenue, Athens, GA 30605, (706) 354–4658, Contact: Gail Kurtz

Youth Network Council, 506 S. Wabash, Chicago, IL 60605, (312) 427–2710, Contact: Denis Murstein

Southwest Network of Youth Services; 2525 Wallingwood Drive, Austin, TX 78746, (512) 328–6860, Contact: Theresa Andreas-Tod

M.I.N.K., A Network of Runaway and Youth Serving Agencies, c/o Youth in Need, 516 Jefferson Street, St. Charles, MO 63301–4152, (314) 946–0101, Contact: Dana Baldwin

Mountain Plains Youth Services, 221 West Rosser, Bismarck, ND 58501, (701) 255–7229, Contact: Linda Wood

Western States Youth Services Network, 1306 Ross Street, Suite B, Petaluma, CA 94954, (707) 763–2213, Contact: Nancy Fastenau

Northwest Network of Runaway and Youth Services, 603 Steward Street, Seattle, WA 98101, (206) 628–3760, Contact: Andrew Estep

Appendix G—OMB State Single Point of Contact Listing

Arizona

Joni Saad, Arizona State Clearinghouse, 3800 N. Central Avenue, Fourteenth Floor, Phoenix, Arizona 85012, Telephone (602) 280–1315, FAX: (602) 280–8144

Arkansas

Mr. Tracy L. Copeland, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, 1515 W. 7th St., Room 412, Little Rock, Arkansas 77203, Telephone: (501) 682–1074, FAX: (501) 682–5206

California

Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Room 121, Sacramento, California 95814, Telephone (916) 323–7480, FAX (916) 323–3018

Delaware

Francine Booth, State Single Point of Contact Executive Department, Thomas Collins Building, P.O. Box 1401, Dover, Delaware 19903, Telephone: (302) 739–3326, FAX: (302) 739–5661

District of Columbia

Charles Nichols, State Single Point of Contact, Office of Grants Mgmt. and Dev., 717 14th Street, NW.—Suite 500, Washington, DC 20005, Telephone: (202) 727–6554, FAX: (202) 727–1617

Florida

Florida State Clearinghouse, Department of Community Affairs, 2740 Centerview Drive, Tallahassee, Florida 32399–2100, Telephone: (904) 922–5438, FAX: (904) 487–2899

Georgia

Tom L. Reid, III, Administrator, Georgia State Clearinghouse, 254 Washington Street, SW—Room 401J, Atlanta, Georgia 30334, Telephone: (404) 656–3855 or (404) 656–3829, FAX: (404) 656–7938

Illinois

Virginia Bova, State Single Point of Contact, Department of Commerce and Community Affairs, James R. Thompson Center, 100 West Randolph, Suite 3–400, Chicago, Illinois 60601, Telephone: (312) 814–6028, FAX: (312) 814–1800

Indiana

Amy Brewer, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone: (317) 232–5619, FAX: (317) 233–3323

Iowa

Steven R. McCann, Division for Community Assistance, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone: (515) 242–4719, FAX: (515) 242–4859

Kentucky

Ronald W. Cook, Office of the Governor, Department of Local Government, 1024 Capitol Center Drive, Frankfort, Kentucky 40601–8204, Telephone: (502) 573–2382, FAX: (502) 573–2512

Maine

Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone: (207) 287–3261, FAX: (207) 287–6489

Maryland

William G. Carroll, Manager, State Clearinghouse for Intergovernmental Assistance, Maryland Office of Planning, 301 W. Preston Street—Room 1104, Baltimore, Maryland 21201–2365, Staff Contact: Linda Janey, Telephone: (410) 225–4490, FAX: (410) 225–4480

Michigan

Richard Pfaff, Southeast Michigan Council of Governments, 1900 Edison Plaza, 660 Plaza Drive, Detroit, Michigan 48226, Telephone: (313) 961–4266, FAX: (313) 961–4869

Mississippi

Cathy Malette, Clearinghouse Officer, Department of Finance and Administration, 455 North Lamar Street, Jackson, Mississippi 39202-3087, Telephone: (601) 359–6762, FAX: (601) 359–6764

Missouri

Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, PO Box 809, Room 760, Truman Building, Jefferson City, Missouri 65102, Telephone: (314) 751–4834, FAX: (314) 751–7819

Nevada

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, Telephone: (702) 687–4065, FAX: (702) 687–3983

New Hampshire

Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process, Mike Blake, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone: (603) 271–2155, FAX: (603) 271–1728

New Mexico

Robert Peters, State Budget Division, Room 190 Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone: (505) 827–3640

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone: (518) 474–1605

North Carolina

Chrys Baggett, Director, N.C. State Clearinghouse, Office of the Secretary of Admin., 116 West Jones Street, Raleigh, North Carolina 27603–8003, Telephone: (919) 733–7232, FAX (919) 733–9571

North Dakota

North Dakota Single Point of Contact, Office of Intergovernmental Assistance, 600 East Boulevard Avenue, Bismarck, North Dakota 58505–0170, Telephone: (701) 224–2094, FAX: (701) 224–2308

Ohio

Larry Weaver, State Single Point of Contact, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266–0411

Please direct correspondence and questions about intergovernmental review to:

Linda Wise, Telephone: (614) 466–0698, FAX: (614) 466–5400

Rhode Island

Daniel W. Varin, Associate Director, Department of Administration/Division of Planning, One Capitol Hill, 4th Floor, Providence, Rhode Island 02908–5870, Telephone: (401) 277–2656, FAX: (401) 277–2083

Please direct correspondence and questions to:

Review Coordinator, Office of Strategic Planning

South Carolina

Omeagia Burgess, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street—Room 477, Columbia, South Carolina 29201, Telephone: (803) 734–0494, FAX: (803) 734–0385

Texas

Tom Adams, Governors Office, Director, Intergovernmental Coordination, PO Box 12428, Austin, Texas 78711, Telephone: (512) 463–1771, FAX: (512) 463–1888

Utah

Carolyn Wright, Utah State Clearinghouse, Office of Planning and Budget, Room 116, State Capitol, Salt Lake City, Utah 84114, Telephone: (801) 538–1535, FAX: (801) 538–1547

West Virginia

Fred Cutlip, Director, Community Development Division, W. Virginia Development Office, Building #6, Room 553, Charleston, West Virginia 25305, Telephone: (304) 558–4010, FAX: (304) 558–3248

Wisconsin

Martha Kerner, Section Chief, State/Federal Relations, Wisconsin Department of Administration, 101 East Wilson Street—6th Floor, PO Box 7868, Madison, Wisconsin 53707, Telephone: (608) 266–2125, FAX: (608) 267–6931

Wyoming

Sheryl Jeffries, State Single Point of Contact, Office of the Governor, State Capital, Room 124, Cheyenne, Wyoming 82002, Telephone: (307) 777–5930, FAX: (307) 632–3909

Territories

Guam

Mr. Giovanni T. Sgambelluri, Director, Bureau of Budget and Management Research, Office of the Governor, PO Box 2950, Agana, Guam 96910, Telephone: 011–671–472–2285, FAX: 011–671–472–2825

Puerto Rico

Norma Burgos/Jose E. Caro, Chairwoman/Director, Puerto Rico Planning Board, Federal Proposals Review Office, Minillas Government Center, PO Box 41119, San Juan, Puerto Rico 00940–1119, Telephone: (809) 727–4444, (809) 723–6190, FAX: (809) 724–3270, (809) 724–3103

North Mariana Islands

Mr. Alvaro A. Santos, Executive Officer, State Single Point of Contact, Office of Management and Budget, Office of the Governor, Saipan, MP, Telephone: (670) 664–2256, FAX: (670) 664–2272

Contact Person: Ms. Jacoba T. Seman, Federal Programs Coordinator, Telephone: (670) 644–2289, FAX: (670) 644–2272

Virgin Islands

Jose George, Director, Office of Management and Budget, #41 Norregade Emancipation Garden Station, Second Floor, Saint Thomas, Virgin Islands 00802

Please direct all questions and correspondence about intergovernmental review to:

Linda Clarke, Telephone: (809) 774–0750, FAX: (809) 776–0069

Appendix H.—Basic Center Program Allocations by State

NEW APPENDIX H—10-JAN-97—BASIC CENTER PROGRAM FOR RUNAWAY AND HOMELESS YOUTH—TABLE OF ALLOCATIONS BY STATE

[Total 57 States and Jurisdictions—F Fiscal Year 1997]

Regions and states	Continuations	New starts	Totals
Region I:			
Connecticut	$347,083	$98,355	$445,437
Maine	104,642	68,332	172,974
Massachusetts	575,000	229,951	804,951
New Hampshire	152,766	12,294	165,060
Rhode Island	0	135,666	135,666
Vermont	93,750	6,250	100,000
Region II:			
New Jersey	496,376	595,170	1,091,546
New York	2,005,383	544,571	2,549,954
Puerto Rico	315,106	337,786	652,892
Virgin Islands	0	45,000	45,000
Region III:			
Delaware	62,143	37,857	100,000
District of Columbia	50,000	50,000	100,000
Maryland	200,000	513,942	713,942
Pennsylvania	867,015	771,151	1,638,166
Virginia	600,000	306,135	906,135
West Virginia	209,606	32,897	242,503
Region IV:			
Alabama	305,000	305,497	610,497
Florida	1,269,885	574,041	1,843,926
Georgia	728,034	342,031	1,070,065
Kentucky	175,000	373,317	548,317
Mississippi	330,049	97,299	427,348
North Carolina	686,724	305,898	992,622
South Carolina	450,207	87,935	538,142
Tennessee	713,625	19,536	733,161
Region V:			
Illinois	1,103,598	639,144	1,742,742
Indiana	477,650	355,000	832,650
Michigan	1,136,350	290,969	1,427,319
Minnesota	551,196	150,310	701,506
Ohio	800,156	813,138	1,613,294
Wisconsin	402,635	358,790	761,425
Region VI:			
Arkansas	146,461	215,315	361,776

NEW APPENDIX H—10-JAN-97—BASIC CENTER PROGRAM FOR RUNAWAY AND HOMELESS YOUTH—TABLE OF ALLOCATIONS BY STATE—Continued

[Total 57 States and Jurisdictions—F Fiscal Year 1997]

Regions and states	Continuations	New starts	Totals
Louisiana	358,721	339,393	698,114
New Mexico	238,721	42,786	281,507
Oklahoma	514,528	(17,086)	497,442
Texas	1,882,000	1,114,299	2,996,521
Region VII:			
Iowa	248,803	163,282	412,085
Kansas	310,240	79,800	390,040
Missouri	333,367	446,147	779,514
Nebraska	178,107	71,744	249,851
Region VIII:			
Colorado	362,483	185,834	548,317
Montana	108,554	25,981	134,535
North Dakota	86,337	13,663	100,000
South Dakota	141,348	(23,771)	117,577
Utah	351,572	28,293	379,865
Wyoming	100,000	0	100,000
Region IX:			
American Samoa	0	45,000	45,000
Arizona	257,378	358,206	615,584
California	3,153,782	1,705,885	4,859,667
Guam	45,000	0	45,000
Hawaii	0	171,844	171,844
Northern Marianas	45,000	0	45,000
Nevada	60,000	152,543	212,543
Region X:			
Alaska	62,606	45,927	108,533
Idaho	175,939	15,689	191,628
Oregon	252,697	189,913	442,610
Washington	497,932	297,975	795,907
Totals	25,120,776	14,166,924	39,287,700

BILLING CODE 4184–01–P

Appendix I

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: *Application* ☐ Construction ☐ Non-Construction; *Preapplication* ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, state, and zip code)*:	Name and telephone number of the person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ . ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(cities, counties, states, etc.)*:

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

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Instructions for the SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

—''New'' means a new assistance award.

—''Continuation'' means an extension for an additional funding/budget period for a project with a projected completion date.

—''Revision'' means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representatives of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4184–01–P

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:

23. Remarks

SF 424A (4-88) Page 2
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Instructions for the SF–424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a–k of Section B.

Section A. Budget Summary

Lines 1–4, Columns (a) and (b)

For applications pertaining to a single Federal grant program (Federal Domestic Assistance Catalog number) and not requiring a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a single program requiring budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in Column (a) and the respective catalog number on each line in Column (b).

For applications pertaining to multiple programs where one or more programs require a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) Through (g)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B. Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a–i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

Assurances—Non-Construction Programs

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will

establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd–3 and 290 ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to non-discrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a–7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.O. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 et seq.).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89–544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

_____

Signature of authorized certifying official

_____

Title

_____

Applicant organization

_____

Date submitted

Program Narrative

This program narrative section was designed for use by many and varied programs. Consequently, it is not possible to provide specific guidance for developing a program narrative statement that would be appropriate in all cases. Applicants must refer the relevant program announcement for information on specific program requirements and any additional guidelines for preparing the program narrative statement. The following are general guidelines for preparing a program narrative statement.

The program narrative provides a major means by which the application is evaluated and ranked to compete with other applications for available assistance. It should be concise and complete and should address the activity for which Federal funds are requested. Supporting documents should be included where they can present information clearly and succinctly. Applicants are encouraged to provide information on their organizational structure, staff, related experience, and other information considered to be relevant. Awarding offices use this and other information to determine whether the applicant has the capability and resources necessary to carry out the proposed project. It is important, therefore, that this information be included in the application. However, in the narrative the applicant must distinguish between resources directly related to the proposed project from those which will not be used in support of the specific project for which funds are requested.

Cross-referencing should be used rather than repetition. ACF is particularly interested in specific factual information and statements of measurable goals in quantitative terms. Narratives are evaluated on the basis of substance, not length. Extensive exhibits are not required. (Supporting information concerning activities which will not be directly funded by the grant or information which does not directly pertain to an integral part of the grant funded activity should be placed in an appendix.) Pages should be numbered for easy reference.

Prepare the program narrative statement in accordance with the following instructions:

- Applicants submitting new applications or competing continuation applications should respond to Items A and D.
- Applicants submitting noncompeting continuation applications should respond to Item B.
- Applicants requesting supplemental assistance should respond to Item C.

A. Project Description—Components

1. Project Summary/Abstract

A summary of the project description (usually a page or less) with reference to the funding request should be placed directly behind the table of contents or SF–424.

2. Objectives and Need for Assistance

Applicants must clearly identify the physical, economic, social, financial, institutional, or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation such as letters of support and testimonials from concerned interests other than the applicant may be included. Any relevant data based on planning studies should be included or referenced in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the narrative, the applicant may volunteer or be requested to provide information on the total range of projects currently conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

3. Results or Benefits Expected

Identify results and benefits to be derived. For example, when applying for a grant to establish a neighborhood child care center, describe who will occupy the facility, who will use the facility, how the facility will be used, and how the facility will benefit the community which it will serve.

4. Approach

Outline a plan of action which describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors which might accelerate or decelerate the work and state your reason for taking this approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of microloans made. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

Identify the kinds of data to be collected, maintained, and/or disseminated. (Note that clearance from the U.S. Office of Management and Budget might be needed prior to an information collection.) List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

5. Evaluation

Provide a narrative addressing how you will evaluate (1) the results of your project and (2) the conduct of your program. In addressing the evaluation of results, state how you will determine the extent to which the program has achieved its stated objectives and the extent to which the accomplishment of objectives can be attributed to the program. Discuss the criteria to be used to evaluate results; explain the methodology that will be used to determine if the needs identified and discussed are being met and if the project results and benefits are being achieved. With respect to the conduct of your program, define the procedures you will employ to determine whether the program is being conducted in a manner consistent with the work plan you presented and discuss the impact of the program's various activities upon the program's effectiveness.

6. Geographic Location

Give the precise location of the project and boundaries of the area to be served by the proposed project. Maps or other graphic aids may be attached.

7. Additional Information (Include if Applicable)

Additional information may be provided in the body of the program narrative or in the appendix. Refer to the program announcement and ''General Information and Instructions'' for guidance on placement of application materials.

Staff and Position Data—Provide a biographical sketch for key personnel appointed and a job description for each vacant key position. Some programs require both for all positions. Refer to the program announcement for guidance on presenting this information. Generally, a biographical sketch is required for original staff and new members as appointed.

Plan for Project Continuance Beyond Grant Support—A plan for securing resources and continuing project activities after Federal assistance has ceased.

Business Plan—When federal grant funds will be used to make an equity investment, provide a business plan. Refer to the program announcement for guidance on presenting this information.

Organization Profiles—Information on applicant organizations and their cooperating partners such as organization charts, financial statements, audit reports or statements from CPA/Licensed Public Accountant, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with federal/state/local government standards, documentation of experience in program area, and other pertinent information. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code *or* by providing a copy of the currently valid IRS tax exemption certificate, *or* by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

Dissemination Plan—A plan for distributing reports and other project outputs to colleagues and the public. Applicants must provide a description of the kind, volume and timing of distribution.

Third-Party Agreements—Written agreements between grantees and subgrantees or subcontractors or other cooperating entities. These agreements may detail scope of work, work schedules, remuneration, and other terms and conditions that structure or define the relationship.

Waiver Request—A statement of program requirements for which waivers will be needed to permit the proposed project to be conducted.

Letters of Support—Statements from community, public and commercial leaders which support the project proposed for funding.

B. Noncompeting Continuation Applications

A program narrative usually will not be required for noncompeting continuation applications for nonconstruction programs. Noncompeting continuation applications shall be abbreviated unless the ACF Program Office administering this program has issued a notice to the grantee that a full application will be required.

An abbreviated application consists of:

1. The Standard Form 424 series (SF–424, SF–424A, SF–424B).

2. The estimated or actual unobligated balance remaining from the previous budget period should be identified on an accurate SF–269 as well as in Section A, Columns (c) and (d) of the SF–424A.

3. The grant budget, broken down into the object class categories on the 424A, and if category ''other'' is used, the specific items supported must be identified.

4. Required certifications.

A full application consists of all elements required for an abbreviated application plus:

1. Program narrative information explaining significant changes to the original program narrative statement, a description of accomplishments from the prior budget period, a projection of accomplishments throughout the entire remaining project period, and any other supplemental information that ACF informs the grantee is necessary.

2. A full budget proposal for the budget period under consideration with a full cost analysis of all budget categories.

3. A corrective action plan, if requested by ACF, to address organizational performance weaknesses.

C. Supplemental Requests

For supplemental assistance requests, explain the reason for the request and justify the need for additional funding. Provide a budget and budget justification *only* for those items for which additional funds are requested. (See Item D for guidelines on preparing a budget and budget justification.)

D. Budget and Budget Justification

Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a

breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification which describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

The following guidelines are for preparing the budget and budget justification. Both federal and non-federal resources should be detailed and justified in the budget and narrative justification. For purposes of preparing the program narrative, ''federal resources'' refers only to the ACF grant for which you are applying. Non-Federal resources are all other federal and non-federal resources. It is suggested that for the budget, applicants use a column format: Column 1, object class categories; Column 2, federal budget amounts; Column 3, non-federal budget amounts, and Column 4, total amounts. The budget justification should be a narrative.

Personnel. Costs of employee salaries and wages.

Justification: Identify the project director or principal investigator, if known. For each staff person, show name/title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), annual salary, grant salary, wage rates, etc. Do not include costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

Fringe Benefits. Costs of employee fringe benefits unless treated as part of an approved indirect cost rate.

Justification: Provide a breakdown of amounts and percentages that comprise fringe benefit costs, such as health insurance, FICA, retirement insurance, taxes, etc.

Travel. Costs of project related travel by employees of the applicant organization (does not include costs of consultant travel).

Justification: For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances. Travel costs for key staff to attend ACF sponsored workshops as specified in this program announcement should be detailed in the budget.

Equipment. Costs of all non-expendable, tangible personal property to be acquired by the project where each article has a useful life of more than one year and an acquisition cost which equals the lesser of (a) the capitalization level established by the applicant organization for financial statement purposes, or (b) $5000.

Justification: For each type of equipment requested, provide a description of the equipment, cost per unit, number of units, total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends.

Supplies. Costs of all tangible personal property (supplies) other than that included under the Equipment category.

Justification: Specify general categories of supplies and their costs. Show computations and provide other information which supports the amount requested.

Contractual. Costs of all contracts for services and goods except for those which belong under other categories such as equipment, supplies, construction, etc. Third-party evaluation contracts (if applicable) and contracts with secondary recipient organizations including delegate agencies and specific project(s) or businesses to be financed by the applicant should be included under this category.

Justification: All procurement transactions shall be conducted in a manner to provide, to the maximum extend practical, open and free competition. If procurement competitions were held or if a sole source procurement is being proposed, attach a list of proposed contractors, indicating the names of the organizations, the purposes of the contracts, the estimated dollar amounts, and the award selection process. Also provide back-up documentation where necessary to support selection process.

Note: Whenever the applicant/grantee intends to delegate part of the program to another agency, the applicant/grantee must provide a detailed budget and budget narrative for each delegate agency by agency title, along with the required supporting information referenced in these instructions.

Applicants must identify and justify any anticipated procurement that is expected to exceed the simplified purchase threshold (currently set at $100,000) and to be awarded without competition. Recipients are required to make available to ACF pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc. under the conditions identified at 45 CFR Part 74.44(e).

Construction. Costs of construction by applicant or contractor.

Justification: Provide detailed budget and narrative in accordance with instructions for other object class categories. Identify which construction activity/costs will be contractual and which will assumed by the applicant.

Other. Enter the total of all other costs. Such costs, where applicable and appropriate, may include but are not limited to insurance, food, medical and dental costs (noncontractual), fees and travel paid directly to individual consultants, space and equipment rentals, printing and publication, computer use, training costs, including tuition and stipends, training service costs including wage payments to individuals and supportive service payments, and staff development costs.

Indirect Charges. Total amount of indirect costs. This category should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services or another cognizant Federal agency.

Justification: With the exception of most local government agencies, an applicant which will charge indirect costs to the grant must enclose a copy of the current rate agreement if the agreement was negotiated with a cognizant Federal agency other than the Department of Health and Human Services (DHHS). If the rate agreement was negotiated with the Department of Health and Human Services, the applicant should state this in the budget justification. If the applicant organization is in the process of initially developing or renegotiating a rate, it should immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the pertinent DHHS Guide for Establishing Indirect Cost Rates, and submit it to the appropriate DHHS Regional Office. Applicants awaiting approval of their indirect cost proposals may also request indirect costs. It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not be also charged as direct costs to the grant. Also, if the applicant is requesting a rate which is less than what is allowed under this program announcement, the authorized representative of your organization needs to submit a signed acknowledgement that the applicant is accepting a lower rate than allowed.

Program Income. The estimated amount of income, if any, expected to be generated from this project. Separately show expected program income generated from program support and income generated from other mobilized funds. Do not add or subtract this amount from the budget total. Show the nature and source of income in the program narrative statement.

Justification: Describe the nature, source and anticipated use of program income in the budget or reference pages in the program narrative statement which contain this information.

Non-Federal Resources. Amounts of non-Federal resources that will be used to support the project as identified in Block 15 of the SF–424.

Justification: The firm commitment of these resources must be documented and submitted with the application in order to be given credit in the review process.

Total Direct Charges, Total Indirect Charges, Total Project Costs. (self explanatory)

BILLING CODE 4184–01–P

U.S. Department of Health and Human Services
Certification Regarding Drug-Free Workplace Requirements
Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 **Federal Register**, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code)_____

_____

Check ___ if there are workplaces on file that are not identified here.

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

DGMO Form#2 Revised May 1990

BILLING CODE 4184–01–C

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participants, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,'' provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded form the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequently by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

* * * * *

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

2. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, [[Page 33043]] should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled ''Certification Regarding Debarement, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction,'' without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form–LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31 U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

State for Loan Guarantee and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL ''Disclosure Form to Report Lobbying,'' in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and no more than $100,000 for each such failure.

_____

Signature

_____

Title

_____

Organization

_____

Date

BILLING CODE 4184–01–P

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter ____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known*: **Congressional District**, *if known*:	 **Congressional District**, *if known*:
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	9. Award Amount, *if known*: $
10. a. Name and Address of Lobbying Entity *(if individual, last name, first name, MI)*:	b. Individuals Performing Services *(including address if different from No. 10a)* *(last name, first name, MI)*:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply)*:	13. Type of Payment *(check all that apply)*:
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment *(check all that apply)*: ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16.	
Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	**Signature:** _____ **Print Name:** _____ **Title:** _____ **Telephone No.:** _____ **Date:** _____
Federal Use Only:	**Authorized for Local Reproduction** **Standard Form - LLL**

BILLING CODE 4184–01–C

Certification Regarding Environmental Tobacco Smoke

Public Law 103–227, Part C—Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor routinely owned or leased or contracted for by an entity and used routinely or regularly for provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1000 per day and/or the imposition of an administrative compliance order on the responsible entity.

By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act. The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for the children's services and that all subgrantees shall certify accordingly.

[FR Doc. 97–5693 Filed 3–7–97; 8:45 am]

BILLING CODE 4184–01–P/M

Federal Register

Monday
March 10, 1997

Part IV

Department of Health and Human Services

Health Care Financing Administration

42 CFR Part 484

Medicare and Medicaid Programs; Revision of Conditions of Participation for Home Health Agencies and Use of Outcome Assessment Information Set (OASIS); Proposed Rules

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 484

RIN 0938–AI00

Medicare and Medicaid Programs; Revision of the Conditions of Participation for Home Health Agencies and Use of the Outcome and Assessment Information Set (OASIS) as Part of the Revised Conditions of Participation for Home Health Agencies

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Introduction to proposed rules.

SUMMARY: In this Part IV—of this issue of the Federal Register, we are publishing two notices of proposed rulemaking relating to revised conditions of participation that home health agencies must meet to participate in the Medicare and Medicaid programs. This introduction explains the background for the two proposed rules and the interrelationship of the two documents.

FOR FURTHER INFORMATION, CONTACT: Susan Levy, (410) 786–9364 and Mary Vienna, (410) 786–6940.

SUPPLEMENTARY INFORMATION: As part of the President's and Vice President's regulatory reform initiative, the Health Care Financing Administration (HCFA) is committed to changing current regulations that focus largely on requirements for measuring procedural standards. One of HCFA's key initiatives in Reinventing Government (REGO) is to revise many of its conditions of participation (COP) to focus on outcomes of care and to eliminate unnecessary procedural requirements. HCFA is working in partnership with the rest of the health care community to institute better, more common sense ways of operating. Within the coming year, HCFA plans to propose revisions to the COP for home health agencies (HHAs), hospitals, and end stage renal disease (ESRD) facilities and also to mount additional research in the area of ESRD to provide the basis for future changes.

A. Common Efforts

1. Reinventing Government (REGO) Initiative

To meet our REGO commitment, we are focusing on an approach for all sets of COP that is:

- Transitional toward a patient outcome based system.
- Intended to stimulate improvements in processes, outcomes of care, and patient satisfaction.
- Patient centered.
- Supported by patient outcomes data.
- Interdisciplinary in the approach to care delivery, reflecting the team approach to health care delivery.

The COP generally adhere to these basic requirements, varying in some degree due to the unique environment and patient case mix of the provider type.

2. Transitional Framework

The transitional framework for each set of COP—

- Begins shifting the oversight focus toward patient health outcomes and away from burdensome and costly procedural requirements, restructures the traditional COP along essential conditions centered on patient care, reflects an interdisciplinary team approach to patient care.
- Prepares the foundation for provider adoption and use of more detailed patient outcome measures developed through private sector experience and research.
- Provides a flexible framework for incorporating better measures as they are developed and tested.

3. Structure

The basic structure of all of the COP follows the Joint Commission on Accreditation of Healthcare Organizations'' (JCAHOs) ''Agenda for Change.'' This structure involves reducing the number of conditions in crosscutting categories; focusing on comprehensive assessment and patient outcomes; and deleting, where possible, process requirements that are not specifically mandated by the statute or believed likely to produce outcomes vital to the protection of patient safety.

Each set of COP has the same essential four conditions that reflect the cycle of patient centered care. The essential four conditions are:

- Patient rights.
- Patient assessment.
- Care planning and coordination of services.
- Quality assessment and performance improvement.

It is important to note that each of the sets of COP requirements are tailored to specific statutory requirements, the historical context of the provider type, the unique form of care delivery, and patient case mix.

4. Professional Input

For each set of COP, national meetings of provider and practitioner groups and beneficiary representatives, and our partners in State survey agencies were consulted about our approach and provided comments. Each proposed set of COP reflects extensive consultation with these groups. We recognize the importance of collaboration and communication with the industry and invite further public comment on the proposed COP and related rules.

B. Challenge for Home Health

The challenge for revising the home health COP has been to—

- Emphasize a regulatory approach that:

+ Moves toward a patient outcome based system;

+ Focuses on quality assessment and performance improvement;

+ Centers on the patient; and

+ Reflects the interdisciplinary team approach to home health care delivery;

- Develop a standard core assessment tool that will: 1) be useful as a management tool for providers; and, 2) eventually enable providers, government agencies, and health care consumers to compare patient indicators and outcomes across more than 9000 HHAs.

What follows in this issue of the Federal Register are two discrete documents:

l. Revised HHA COP. These COP include the refinements discussed above.

The fundamental principles guiding the development of the revised HHA COP are to:

- Stress quality improvements, incorporating to the greatest extent possible, outcome oriented, data supported quality assessment and performance improvement. The quality assessment and performance improvement program is of the HHA's own design and allows the HHA flexibility to create its own tailored program of continuous improvement. HHAs could be increasingly flexible and creative in their approach to patient care and delivery of services as they use their own information to assess and improve patient services, outcomes, and satisfaction. HCFA has developed the OASIS core standard assessment data set to support this proactive approach to quality improvement.
- Facilitate flexibility in how an HHA meets our performance requirements. For example, HCFA is proposing to adopt the REGO approach to personnel qualifications by indicating, in cases where personnel qualifications are not statutorily required, the HCFA personnel qualification requirements

would apply only in States without a licensing requirement.

- Eliminate unnecessary administrative requirements. Process oriented requirements are included only where we believe they remain highly predictive of ensuring desired patient outcomes and protect patient safety.
- Assure patients rights.
- Focus on continuous, integrated care centered around patient assessment, care planning, coordination of service delivery, and quality assessment and performance improvement. The four ''core conditions'' are Patient Rights, Patient Assessment, Care Planning and Coordination of Services, and Quality Assessment and Performance Improvement.
- Incorporate the program integrity approaches.

2. The Proposed Implementation of the Outcomes and Assessment Information Set (OASIS).

This proposed rule would revise the new conditions of participation for HHAs by requiring an HHA to incorporate the 79-item, core standard assessment data set, referred to as the OASIS, into its comprehensive patient assessment, as well as use OASIS information as part of its internal quality assessment and performance improvement program. The OASIS will serve as the foundation for future reliance on patient outcomes in provider decision making, regulatory oversight and consumer choice. This proposed rule does not require the HHA to collect and report OASIS to a national data system.

This proposed rule is an integral part of the Administration's larger efforts to achieve broad-based, measurable improvement in the quality of care furnished through Federal programs. It is a fundamental component in the transition to a quality assessment and performance improvement approach based on measurable patient outcomes of care and satisfaction with the Medicare home health benefit. In order to reach the point where we can build and use a national data set of measures of outcomes and satisfaction, we must begin with a requirement that all HHAs use the same valid and reliable core standard assessment data set. By integrating a core standard assessment data set into its own more comprehensive assessment system, an HHA can use such a valid and reliable data set as the foundation for its quality assessment and performance improvement program.

We expect to receive positive and constructive comments on both of these documents. We have published these documents as separate rules. They reflect discreet steps in the transition toward a regulatory system based on patient outcomes. While linked in important ways, they have different impacts on the provider community. We have published them in the same Federal Register because together they reflect a more complete picture of the Department's patient outcome based strategy.

We have published the description of the OASIS as a separate proposed rule following the proposed HHA COP in this Part of this issue of the Federal Register. Please note that the implementation of OASIS would change only §§ 484.55 and 484.65 of the revised HHA COP. We have included several notes in the HHA COP to direct the reader to the OASIS notice for more comprehensive information.

(Catalog of Federal Domestic Assistance Programs No 93.774, Medicare—Supplementary Medical Insurance, and No. 93,778, Medical Assistance Program)

Dated: January 21, 1997.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: January 30, 1997.

Donna E. Shalala,

Secretary.

[FR Doc. 97–5314 Filed 3–5–97; 9:45 am]

BILLING CODE 4120–01–P

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42 CFR Part 484

[BPD–819–P]

RIN 0938–AG81

Medicare and Medicaid Programs; Conditions of Participation for Home Health Agencies

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule revises the existing conditions of participation that home health agencies must meet to participate in the Medicare program. The proposed requirements focus on the actual care delivered to patients by home health agencies and the results of that care, reflect an interdisciplinary view of patient care, allow home health agencies greater flexibility in meeting quality standards, and eliminate unnecessary procedural requirements. These changes are an integral part of the Administration's efforts to achieve broad-based improvements in the quality of care furnished through Federal programs and in the measurement of that care, while at the same time reducing procedural burdens on providers.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on June 9, 1997, except for comments on information collection requirements, which must be received on or before May 9, 1997.

ADDRESSES: Mail written comments (one original and three copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD–819–P, P.O. Box 7519, Baltimore, MD 21207–0519.

If you prefer, you may deliver your written comments (one original and three copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room C5–11–17, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code BPD–819–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

For comments that relate to information collection requirements, mail a copy of comments to: Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building Washington, DC 20503, Attention Allison Herron Eydt, HCFA Desk Officer.

Copies: To order copies of the Federal Register containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $8.00.

As an alternative, you can view and photocopy the Federal Register document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the Federal Register.

FOR FURTHER INFORMATION CONTACT: Susan Levy, (410) 786–9364 and Mary Vienna, (410) 786–6940.

SUPPLEMENTARY INFORMATION:

I. Introduction

As the single largest payer for health care services in the United States, the Federal Government has a critical responsibility for the quality of care delivered under its programs. Historically, the Health Care Financing Administration (HCFA) has adopted a quality assurance approach that has been directed toward identifying health care providers that furnish poor quality care or fail to meet minimum Federal standards. These problems would either be corrected or would lead to the exclusion of the provider from participation in the Medicare or Medicaid programs. However, we have found that this problem-focused approach has inherent limits. Trying to ensure quality through the enforcement of prescriptive health and safety standards, rather than trying to improve quality of care for all patients, has resulted in HCFA expending much of its resources on dealing with chronic problems with marginal providers, rather than on stimulating broad-based improvements in quality of care.

We believe that a different approach toward achieving quality health care for Federal beneficiaries is needed both to take advantage of the continuing advances in the health care delivery field and to keep up with growing demands for services. This approach necessitates revising our requirements to focus on the expected patient-centered outcomes of Medicare services. Thus, for home health services, we have developed a core set of requirements encompassing patient rights, comprehensive assessment, and patient care planning and coordination. Tieing these requirements together is a fourth core requirement—quality assessment and performance improvement—that rests on the assumption that a provider's own quality management system is the key to improved performance. Our objective is to achieve a balanced approach combining HCFA's responsibility to ensure that essential health and quality standards are achieved and maintained with a provider's responsibility to monitor and improve its own performance.

To achieve this objective, we are now developing revised requirements for several major health care provider types, including the new HHA requirements set forth in this proposed rule as well as revised requirements for hospitals, hospices, and end-stage renal disease facilities. In addition, elsewhere in today's issue of the Federal Register, we are publishing a proposed rule (Use of the OASIS As Part of the Conditions of Participation for Home Health Agencies) that describes the core standard assessment data set that we are proposing to require HHAs to incorporate into the comprehensive assessment process. This proposed rule is discussed below in section II.D of this preamble. All of these proposals are directed at (1) Improving outcomes of care and satisfaction for patients, (2) reducing burden on providers while increasing flexibility and expectations for continuous improvement, and (3) increasing the amount and quality of information available on which to base health care choices and efforts to improve quality.

We note that HCFA's revised approach to its quality assurance responsibilities is linked closely both to the Administration's commitment to reinventing health care regulations and to HCFA's own strategic plan that sets forth our future goals. This regulation is a regulatory reform initiative included in the President's and Vice President's July 1995 report entitled ''Reinventing Health Care Regulations''. In accordance with the President's Reinventing Health Care Regulations initiative, HCFA is revising the HHA COPs to eliminate unnecessary process regulations and focus on outcomes of care. Thus, these initiatives share three common themes. First, they promote a partnership between HCFA and the rest of the health care community, including the provider industry, practitioners, health care consumers, and the States. Second, they are based on the belief that we should retain only those regulations that represent the most cost-effective, least intrusive, and most flexible means of meeting HCFA's quality of care responsibilities. Finally, they rely on the principle that making powerful data available to consumers and providers can produce a strong nonregulatory force to improve quality of care. We believe that the revised HHA requirements proposed below, and the revisions that will follow for other providers, will provide the foundation for a health care system in which this type of information is readily available. In addition, certain provisions in this HHA COP rule support the Administration's reinvention initiative combating fraud and abuse. Such provisions are designated as serving this objective when appropriate.

II. Background

A. Home Health Care Benefit

Home health services are covered for the elderly and disabled under the Hospital Insurance (Part A) and Supplemental Medical Insurance (Part B) benefits of the Medicare program and are described in section 1861(m) of the Social Security Act (the Act). These services must be furnished by, or under arrangement with, an HHA that participates in the Medicare program, be provided on a visiting basis to the beneficiary's home, and may include the following:

- Part-time or intermittent skilled nursing care furnished by or under the supervision of a registered nurse.
- Physical therapy, speech-language pathology, and occupational therapy.
- Medical social services under the direction of a physician.
- Part-time or intermittent home health aide services.
- Medical supplies (other than drugs and biologicals) and durable medical equipment.
- Services of interns and residents if the HHA is owned by or affiliated with a hospital that has an approved medical education program.
- Services at hospitals, SNFs, or rehabilitation centers when they involve equipment too cumbersome to bring to the home.

Section 1861(o) of the Act specifies certain requirements that a home health agency must meet to participate in the Medicare program. (Existing regulations at 42 CFR 440.70(d) specify that HHAs participating in the Medicaid program must also meet the Medicare conditions of participation.) In particular, section 1861(o)(6) provides that an HHA must meet the conditions of participation specified in section 1891(a) of the Act and such other conditions of participation as the Secretary finds necessary in the interest of the health and safety of patients of HHAs. Section 1891(a) of the Act establishes specific requirements for HHAs in several areas, including patient rights, home health aide training and competency, and compliance with applicable Federal, State, and local laws.

Under the authority of sections 1861(o) and 1891 of the Act, the Secretary has established in regulations the requirements that an HHA must meet to participate in Medicare. These requirements are set forth at 42 CFR Part 484, Conditions of Participation: Home

Health Agencies. The conditions of participation (COPs) apply to an HHA as an entity as well as the services furnished to each individual under the care of the HHA, unless a condition is specifically limited to Medicare beneficiaries. Under section 1891(b) of the Act, the Secretary is responsible for assuring that the COPs, and their enforcement, are adequate to protect the health and safety of individuals under the care of an HHA and to promote the effective and efficient use of Medicare funds. To implement this requirement, State survey agencies generally conduct surveys of HHAs to determine whether they are complying with the conditions of participation.

B. Why Revise the Conditions of Participation?

The conditions of participation for HHAs were originally promulgated in 1973 and have been revised in part on several occasions. In particular, we made significant revisions to the COPs in 1989 (54 FR 33354) and 1991 (56 FR 32967), largely to implement provisions of section 4021 of the Omnibus Budget Reconciliation Act of 1987 (OBRA ''87, Public Law 100–203), which added section 1891 of the Act. Most recently, we made minor revisions to the HHA COPs on December 20, 1994 (59 FR 65482). However, many of the current COPs have remain unchanged since their inception.

Our decision to propose major changes to the existing conditions is based on several considerations. First, as discussed above, the revision of the HHA requirements is part of a larger effort by HCFA to bring about improvements in the quality of care furnished to Federal beneficiaries through a new approach to our quality of care responsibilities. Moreover, nowhere is the need for change more acute than in home health services. During the 1980's and early 1990's, major changes have taken place in the home health benefit, the provider industry, home health care practices, and the characteristics of home health care users that have combined to make home health services the most rapidly growing segment of Medicare expenditures.

In response to challenges associated with the expanding use of home health services, HCFA in 1994 began the Medicare Home Health Initiative (Initiative) to identify opportunities for improvement in the Medicare home health benefit. The Initiative is an agency-wide effort that routinely solicits input and feedback on a wide variety of issues from HCFA's partners in the home health care community. Representatives from HCFA, consumer groups, the home health care industry, professional associations, regional home health intermediaries, and States (including State Medicaid agencies) have convened in a series of collaborative meetings during 1994 and 1995. Among the Initiative's primary recommendations is that HCFA develop HHA COPs that include a core standard assessment data set and patient-centered, outcome-oriented performance expectations that will stimulate continuous quality improvement in home health care.

The existing HHA COPs do not provide patient-centered, outcome-oriented standards, nor do they provide for the operation of a quality assessment and performance improvement program. Historically, we set requirements for participation in the Medicare program by establishing requirements that address the structures and processes of health care. These requirements are largely the result of professional consensus, since there are no data supporting the link between structure and process requirements and positive patient outcomes. The combination of process-oriented requirements with an enforcement approach that focuses on identifying providers that do not have the required structures and procedures in place will not be adequate to meet the growing challenges associated with the changing home health care environment. Thus, we have concluded that significant revisions to the HHA conditions of participation are essential.

C. Transforming the HHA Conditions of Participation

As we began to develop new proposed COPs for HHAs, we solicited the advice and suggestions of the home health industry, professional associations and practitioner communities, as well as consumer advocates and State and other governmental agencies with an interest or responsibility in HHA regulation and oversight. The fundamental principles that guided the development of new COPs were the need to:

- Focus on the continuous, integrated care process that a patient experiences across all aspects of home health services, centered around patient assessment, care planning, service delivery, and quality assessment and performance improvement.
- Adopt a patient-centered, interdisciplinary approach that recognizes the contributions of various skilled professionals and how they interact with each other to meet the patient's needs. A home care patient encounters many services and is exposed to several disciplines, given the interdisciplinary approach to home health care delivery. An interdisciplinary team approach offers a more accurate portrayal of overall patient care outcomes across interdependent functions. Thus, we would eliminate requirements that encourage ''stovepipe'' administrative and enforcement structures.
- Stress quality improvements, incorporating to the greatest possible extent an outcome-oriented, data-driven quality assessment and performance improvement program. Thus, the new COPs would invest our principal expectations for performance in a powerful requirement that each HHA participate in its own quality assessment and performance improvement program.
- Facilitate flexibility in how an HHA meets our performance expectations, and eliminate outdated process requirements about which there was little consensus or evidence that they were predictive of good outcomes for patients or necessary to prevent harmful outcomes for patients.
- Require that patient rights are assured.

Finally, in order for the HHA conditions to move from a process/structure orientation toward an outcome orientation, outcome measures must be identified, developed, and validated. As discussed below, we have already taken several steps toward the development and implementation of a core standard assessment data set that will ultimately provide home health consumers, providers, and the regulators the data they need to improve quality and focus enforcement, as detailed elsewhere in today's issue of the Federal Register.

Based on these principles, we are proposing new HHA conditions of participation that revise or eliminate many existing requirements and incorporate critical requirements into four ''core conditions.'' These four COPs—Patient Rights, Patient Assessment, Care Planning and Coordination of Services, and Quality Assessment and Performance Improvement—would focus both provider and surveyor efforts on the actual care delivered to the patient, the performance of the HHA as an organization, and the impact of the treatment furnished by the HHA on the health status of its patients. The first, Patient Rights, emphasizes an HHA's responsibility to respect and promote the rights of each home health patient. The second proposed core condition, Patient Assessment, reflects the critical nature of a comprehensive assessment in determining appropriate treatments and accomplishing desired health outcomes. Third, the Care Planning and

Coordination of Services COP would incorporate the interdisciplinary team approach to providing home health services. The fourth proposed core COP, Quality Assessment and Performance Improvement, would then charge each HHA with responsibility for carrying out a performance improvement program of its own design to effect continuing improvement in the quality of care furnished to its customers.

In the revised COPs, we are proposing to include process-oriented requirements only where we believe they remain highly predictive of ensuring desired outcomes and the prevention of harmful outcomes (for example, home health aide competency and supervision and timeliness of patient assessment). Far more frequently, however, we have eliminated process details from the existing requirements and instead included the related area of concern as a component that must be evaluated by the HHA as part of the HHA's overall quality assessment and performance improvement responsibilities. For example, we removed the process requirements under existing § 484.12(c) that an HHA and its staff must comply with accepted professional standards and principles. We transformed the approach by incorporating current clinical practice guidelines and professional standards applicable to home care as a factor to be considered in the HHA's overall quality assessment and performance improvement program. The practical effect of this approach would be to stimulate the HHA to find its own performance problems, fix them, and continuously strive to improve patient outcomes and satisfaction, as well as efficiency and economy.

We believe that the proposed COPs based on these principles reflect a fundamental change in HCFA's regulatory approach, a change that to a large extent establishes a shared commitment between HCFA and Medicare providers to achieve improvements in the quality of care furnished to HHA patients. The proposed COPs invest HHAs with internal responsibility for improving their performance, rather than relying on an externally-based approach in which prescriptive Federal requirements are enforced through the punitive aspects of the survey process. This change would enable HCFA and the States to use our resources principally in joining with HHAs in partnerships for improvement. This change in our regulations to a patient-centered, outcome-oriented approach will also likely fundamentally change our approach to the survey process. For example, since the proposed regulation sets a performance expectation that an HHA constantly improve, it may be possible to alter significantly, or possibly eliminate altogether, the current Functional Assessment Instrument (FAI) that surveyors use to assess the outcomes of care through home visits and some record review. In an expanded review of the agency's approach to quality assessment and performance improvement, we may approach this task differently, with greater flexibility than the current FAI affords. We anticipate fewer compliance surveys and the reduced need to threaten or take adverse actions that could jeopardize a HHA's reputation, viability as a going concern, and participation in the Medicare and Medicaid programs. Yet these requirements provide the Secretary and State Medicaid agencies with more than adequate regulatory basis for compelling improved performance or termination of participation based on failure to correct seriously deficient performance that can or does threaten the health and safety of patients, or seriously impairs the HHA's capacity to provide needed care and services to patients.

We recognize that the successful implementation of these proposed regulations will depend largely on how effectively State and Federal surveyors are able to learn, use, and internalize this patient-centered, outcome-oriented approach and incorporate it into the survey process. The approach embodied in these regulations, is consistent with the approach that we have taken in survey and certification, beginning as early as 1985 (in intermediate care facilities for the mentally retarded) and 1986 (in nursing homes). In concert with the States, we have trained surveyors to develop information from the survey process that leads to conclusions about how the provider's performance has impacted—positively and negatively—on patients, especially in terms of the care and services that patients actually experience. For example, for many years, in nursing homes surveyors have been trained to interview residents and family members, seeking information that contributes to their assessment of how the nursing home's performance is experienced by the residents and their families. Before the use of outcome oriented surveys, surveyors focused on record reviews and observing care processes and organizational structures.

These proposed regulations contain two critical improvements that support and extend our focus on patient-centered, outcome-oriented surveys. First, the proposed regulations are designed to enable surveyors to focus explicitly on assessing outcomes of care, because the regulations would specify that each individual receiving the care, his or her assessed needs demonstrate is necessary (rather than focusing simply on the services and processes that must be in place). Second, the addition of a strong quality assessment and performance improvement requirement not only stimulates the provider to continuously monitor its performance and find opportunities for improvement, it also affords the surveyor the ability to assess how effectively the provider has been pursuing a continuous quality improvement agenda. All of the changes are directed toward improving outcomes of care.

We have already begun the process of identifying the tasks necessary to train surveyors and their supervisors and managers effectively in this refined, expanded approach. In addition, HCFA is implementing a new State survey agency quality improvement program that is designed to help State survey agencies increase their focus on improvement strategies in the survey and certification process. As more sources of performance data and other performance information become available, we will work with State survey agencies to determine how to use the data effectively to target scarce survey resources and to identify and implement opportunities for improvement (such as reduction in pressure sores or improvements in medication management in home care patients).

We believe that the proposed COPs would decrease the regulatory burden on HHAs and provide them with greatly enhanced flexibility. At the same time, the proposed requirement for a program of continuous quality assessment and performance improvement would increase performance expectations for HHAs in terms of achieving needed and desired outcomes for patients and increasing patient satisfaction with services provided.

We recognize that there are those who fundamentally believe that regulations, particularly when they directly affect the health and safety of people, should be prescriptive in their detail in order to ensure that providers do not engage in practices that threaten patient health and safety or to increase the clarity of intent, just as there are those who support strongly our change in approach. We invite comment on this fundamental shift in our regulatory approach and any other concerns HHAS may have regarding their ability both operationally and financially to undertake this new approach. We are

especially interested in comments that address how HCFA could improve this approach, what additional flexibility could be provided, what (if any) process requirements that are critical to patient care and safety should be added, and how well HCFA's investment in the HHA's participation in a strong continuous quality assessment and performance improvement program of their own design will achieve our stated and intended goal of improving the efficiency, effectiveness, and quality of patient outcomes and satisfaction.

D. Incorporation of a Core Standard Assessment Data Set into the HHA Conditions of Participation

Elsewhere in today's issue of the Federal Register, we are proposing to require HHAs to incorporate a core standard assessment data set, the Outcomes and Assessment Information Set (OASIS), into the comprehensive assessment process and the quality assessment and performance improvement programs. The incorporation of OASIS represents the first step toward implementing HCFA's plans to use outcome-based quality measures in home health services.

The details of how the OASIS was developed and tested, as well as how it can be used are explained in the OASIS proposed rule, along with the specific proposed regulatory language intended to achieve the stated purpose of introducing the OASIS into the HHA program.

III. Provisions of the Proposed Regulations

A. Overview

Under our proposal, the HHA conditions of participation would continue to be set forth in regulations under 42 CFR part 484. However, since many of the existing requirements in part 484 would be revised, consolidated with other requirements, or eliminated, we are proposing a complete overhaul of the existing organizational scheme. The most significant change would be our proposal to group together all COPs directly related to patient care and place them near the beginning of part 484. COPs concerning the organization and administration of an HHA would follow in a separate subpart. We believe this organization is in keeping with the patient-centered orientation of these regulations and helps illustrate our view that patient assessment, care planning, and quality assessment and improvement efforts are central to the delivery of high quality care.

The proposed organizational format for part 484 is as follows:

PART 484—CONDITIONS OF PARTICIPATION: HOME HEALTH AGENCIES

Subpart A—General Provisions

Sec.
484.1 Basis and Scope
484.2 Definitions

Subpart B—Patient Care

484.50 Condition of Participation: Patient Rights
484.55 Condition of Participation: Comprehensive Assessment of Patients
484.60 Condition of Participation: Care Planning and Coordination of Services
484.65 Condition of Participation: Quality Assessment and Performance Improvement
484.70 Condition of Participation: Skilled Professional Services
484.75 Condition of Participation: Home Health Aide Services

Subpart C—Organizational Environment

484.100 Condition of Participation: Compliance with Federal, State, and Local Laws
484.105 Condition of Participation: Organization and Administration of Services
484.110 Condition of Participation: Clinical Records
484.115 Personnel Qualifications for Skilled Professionals

B. Proposed Subpart A, General Provisions

Like the existing COPs, the revised conditions would begin with a brief section (proposed § 484.1) that would specify the statutory authority for the ensuing regulations. The only change proposed in this section would be the elimination of the reference to the statutory authority for an HHA's institutional planning responsibilities (existing § 484.1(a)(2)). This change reflects our proposal to eliminate from the HHA COPs a restatement of the statutory requirements at section 1861(z) of the Act concerning institutional planning. See section III.D of this proposed rule for a further discussion of this issue.

Under proposed § 484.2, we would set forth definitions for terms used in the HHA COPs that we believe need clarification. We are proposing to eliminate existing definitions for several terms for which we believe meaning is self-evident, such as ''HHA,'' ''nonprofit agency,'' or ''bylaws,'' as well as for terms that would not be included in the revised COPs. We are proposing to delete the current definitions for ''subdivision'' and ''subunit'' because the terms draw distinctions for participation and payment for which there are no differences. We are proposing to delete the current definitions for ''clinical note,'' and ''progress note,'' and ''summary report'' because the terms are commonly accepted as documentation requirements reflecting good medical practice to assess the individual's reaction or response to services furnished. We believe that the focus should be on documentation of the actual care provided to the individual via the interdisciplinary team within the comprehensive assessment, plan of care, and clinical record rather than the term used to describe the entry. We are deleting the definition for supervision from this section and incorporating the concept under the proposed skilled professional services COP. We are soliciting comments on the feasibility of a consolidated definition section in the Code of Federal Regulations (CFR) for definitions that are applied consistently throughout the Medicare program.

The definitions that would be included under proposed § 484.2 are as follows:

Branch means a location or site from which a home health agency provides services within a portion of the total geographic area served by the parent agency. The branch office is part of the home health agency and is located sufficiently close to share administration, supervision, and services in a manner that renders it unnecessary for the branch independently to meet the conditions of participation as a home health agency.

Parent HHA means the agency that develops and maintains administrative control of branches.

Quality indicator means a specific, valid, and reliable measure of access, care outcomes, or satisfaction, or a measure of a process of care that has been empirically shown to be predictive of access, care outcomes, or satisfaction.

With the exception of ''quality indicator,'' all of these terms are defined in the same way as in existing § 484.2. We are adding a definition for the term ''quality indicator'' because, as discussed above, the use of quality indicators is central to an HHA's successful implementation of a quality assessment and performance improvement program.

We note that we would not retain the provisions of existing § 484.4, Personnel qualifications, under proposed subpart A, General Provisions. As discussed in detail in section III.D of this preamble, we are proposing major modifications to the prescriptive personnel qualification requirements now in place. Remaining requirements would be set forth under proposed § 484.115.

C. Proposed Subpart B, Patient Care

1. Patient Rights (Proposed § 484.50)

Section 1891(a)(1) of the Act establishes as a Medicare COP that an HHA must protect and promote the rights of each individual under its care. These rights encompass being informed in advance regarding the care to be provided and having an opportunity to participate in care planning; voicing grievances; confidentiality of records; respect for property; being informed about specific coverage and noncoverage of services; and availability of information in writing and through a home health services hotline. These statutory provisions are incorporated in existing regulations at § 484.10.

We would retain these statutory provisions in the proposed regulations and redesignate existing § 484.10 as proposed § 484.50, the first core COP, and also the first COP in proposed Subpart B, Patient Care. We are proposing one substantive change to the patient rights provisions. Specifically, we would expand the standard under existing paragraph (c)(l) relating to informing the patient in advance regarding care and treatment to be provided by the home health agency. We propose to specify that the patient must also be informed about ''expected outcomes'' of treatment and ''barriers'' to treatment. We believe that these revisions represent an additional safeguard of patient health and safety. Open communication between HHA staff and the patient and access of the patient to treatment information are vital tools for enhancing the patient's participation in his or her coordinated care planning. In addition, there are many environmental factors (for example, lack of nutrition and lack of family and emotional support) that are barriers that could impact the effectiveness of treatment decisions.

2. The Cycle of Care: Assessment, Planning, and Delivery

The patient care assessment, planning, and treatment process that is embodied in the next three COPs can be seen as a cycle. Through the use of a comprehensive assessment, accurate and timely patient information is made available for use in the patient treatment process. The treatment process is the actual interdisciplinary care furnished to the patient. The patient treatment process results in an effect on the patient's condition, whether it is positive, negative, or neutral. An HHA's assessment of the effect of treatment then enters into subsequent treatment decisions, and the cycle of comprehensive assessment continues. Through this cycle, accurate patient information yielded from each comprehensive assessment will result in more effective and appropriate treatment decisions, thus generating a positive effect on treatment decisions and yielding desired outcomes.

a. Comprehensive Assessment of Patients (Proposed § 484.55)

Introduction The proposed Comprehensive Assessment of Patients COP reflects the patient-centered, interdisciplinary approach of the proposed COPs and underscores our view that systematic patient assessment is essential to improving quality of care and patient outcomes.

Patient assessment contributes to quality of care improvements in three closely linked stages. First, the information generated from an interdisciplinary, comprehensive assessment of each patient is a vital tool for developing a patient's care plan and making individual treatment decisions. An HHA would then track the patient's progress towards achieving the desired care outcome and make appropriate changes to the patient's plan of care and treatment. As an HHA carries out this process on a repeated basis, the second contribution of patient assessment becomes clear. That is, the HHA is able to evaluate the results of its treatment decisions on an aggregate basis. Thirdly, accurate patient information yielded from the comprehensive assessment process would inform the HHA's future care planning process, generating continuing improvements in an HHA's treatment decisions and ability to produce desired patient outcomes. We believe that these internal quality improvement strategies reflect contemporary standard practice for many HHAs, and we are proposing to revise the COPs to support this outcome-oriented approach.

These first two uses for comprehensive patient assessment data basically involve short-term strategies that can be implemented by individual HHAs. In this proposed rule, however, we are also laying the foundation for a long-term strategy in which HCFA would use assessment information from many HHAs to define and measure care outcomes for home health care users. As discussed above, these quality indicators could then be built into a national data system for use by HHAs to improve the quality of care they provide and by HCFA to monitor patient outcomes.

Proposed Patient Assessment Requirements

The primary requirement under the proposed COP would be that each patient receive from the HHA a patient-specific, comprehensive assessment that identifies the patient's need for home care and that meets the patient's medical, nursing, rehabilitative, social, and discharge planning needs. For Medicare patients, identifying the need for home care would include the assessment an individual's homebound status. An individual's homebound status is a critical eligibility requirement. This requirement would promote program integrity because it is the first regulatory requirement that directly evaluates homebound status.

Under our proposal, each HHA would have the responsibility and the flexibility to determine the content and process of its own patient assessment, within the broad requirement that it identifies the patient's care and discharge planning needs. The intent of requiring patient-specific comprehensive assessments is to avoid the use of ''canned'' patient assessments that do not reflect the individual needs of each patient. The comprehensive assessment must fully reflect each individual patient situation.

We are also proposing to require that the assessment must incorporate the use of a core standard assessment data set that is established by HCFA as a regulatory requirement under the comprehensive assessment condition elsewhere in this issue of the Federal Register. The data set includes only information necessary to measure outcomes of care for quality indicators; thus, our intent is not to develop a complete patient assessment but rather to identify standardized data elements that fit within the HHA's overall comprehensive assessment responsibilities. That is, the incorporation of the core standard assessment data set will complement the HHA's current approach to comprehensive assessment.

The existing COPs contain several requirements that address the need for patient assessment, including most notably a long and detailed list of items under existing § 484.18(a) that are required to be covered in a plan of care, such as pertinent diagnoses, mental status, and functional limitations. In place of this requirement, we would emphasize the importance of the comprehensive assessment by establishing patient assessment as a separate COP, specifying the desired outcome of the assessment (that is, the identification of a patient's care needs), and then allowing HHAs the flexibility to determine how best to achieve this outcome. We believe that this approach is consistent with current accepted practices in HHAs and that most HHAs

now perform a comprehensive assessment for most of their patients.

The first standard under the proposed comprehensive assessment COP concerns drug regimen review (proposed § 484.55(a)). Under this standard, we would retain the existing requirement of a drug regimen review from § 484.18(c), but would clarify the requirements by eliminating the identification of ''adverse actions'' and ''contraindicated medications'' and substituting the more concise requirements of review for drug interactions, duplicative drug therapy and noncompliance with drug therapy. This modification narrows the scope of the drug regimen review, provides accountability, and focuses the assessment toward data predictive of a significant patient outcome.

The second proposed standard sets forth the requirements for the initial assessment visit. Specifically, at proposed § 484.55(b), we propose that a registered nurse must perform an initial assessment visit based on physician's orders to determine the immediate care and support needs of the patient either within 48 hours of referral or within 48 hours after the patient's return home, or within 48 hours of the physician-ordered start of care date, if that is later. If rehabilitation therapy services are the only services ordered by the physician, the initial assessment would be made by the appropriate rehabilitation skilled professional. We welcome comments on the appropriateness of using competent individuals other than a registered nurse or appropriate therapist to perform initial patient assessments. We also invite comments on the feasibility of permitting the delegation of nursing responsibilities within the scope of State nurse practice acts to competent individuals.

The third standard (proposed § 484.55(c)) would specify the timeframe in which the HHA must complete the comprehensive assessment. We propose that the HHA must complete the comprehensive assessment in a timely manner consistent with the patient's immediate needs, but no later than 5 working days after the start of care.

The fourth standard (proposed § 484.55(d)) concerns updates of the comprehensive assessment. We would provide that the comprehensive assessment must discuss the patient's progress toward clinical outcomes and be updated and revised as frequently as the patient requires, but no less frequently than every 62 days from the start of care date, which is when the patient's plan of care is revised for physician review and when the patient is discharged.

These proposed standards essentially would replace the requirements concerning the duties of the registered nurse under the existing skilled nursing services COP (§ 484.30(a)). Currently, a registered nurse must regularly reevaluate the patient's nursing needs, initiate the plan of care and necessary revisions, prepare clinical and progress notes, coordinate services, and inform the physician and other personnel of changes in the patient's condition and needs. The existing requirement emphasizes the patient information process. In contrast, the proposed comprehensive assessment COP would focus on ensuring that all critical information concerning a patient is routinely incorporated through timely assessments that identify a patient's initial and changing needs.

Under proposed § 484.55 (b) and (c), we are proposing specific timeframes for the initial assessment, completion of the assessment, and interim updates to the patient assessment. We believe that these requirements, though process-oriented, are predictive of good patient care and safety, as well as necessary to prevent harm to the patient. Our rationale for these timeframes is that by definition, a new patient being referred to a home health agency for initiation of services is at a point of immediate and serious need, especially as patients are returned home from hospital care sooner than ever before. Likewise, as the complexity of the care needs of patients increases, so does the need for comprehensive assessment of the patient, and the importance of implementing an effective care plan promptly becomes paramount.

We believe that these requirements pose little or no burden for the well-managed home health agency since they would in all likelihood be performed in the absence of regulations. However, the proposed timeframes serve as a strong performance expectation for HHAs that may not have adequate resources (financial and human resources) by setting the outside acceptable time for these activities to occur. If too many patient referrals occur together, some patients might be neglected or harmed by the HHA's inability to see the patient quickly or to conduct and complete the needed comprehensive assessment so effective service delivery can begin. Thus, if an HHA recognizes that its workload is such that it is not capable of beginning work with a patient virtually immediately upon referral, the patient should not be accepted for care.

Under proposed § 484.55(d), we are proposing that the comprehensive assessment be updated as frequently as the patients condition requires but not less frequently than every 62 days, for several reasons:

(1) Especially in the early stages of care, patient needs, progress, and circumstances can change greatly, and changes in the status of the patient can and should prompt changes in approaches to care, so reassessment as needed helps to inform the revision of the care plan and service delivery;

(2) When HCFA and the home health community are prepared to begin collecting and utilizing quality indicator data (which will come from the core standard assessment data set), it will be necessary for the HHA to report the data on a regular basis. The developers of the core standard assessment data set have found the roughly 2-month timeframe to be an effective interval for data points for comparison purposes, which also coincides well with the recertification timeframe in item (3) below; and

(3) An HHA is required to have the patient recertified for continued care every 62 days, which serves as a logical point for updating an assessment if no updates have already been completed.

We welcome comments on whether the specific proposed timeframes in the regulation text are reasonable and consistent with current medical practice, and whether the timeframes should be used as benchmarks to reflect patient health and safety concerns involving the timeliness of the assessment components.

3. Care Planning and Coordination of Services (Proposed Section 484.60)

Currently, the condition of participation concerning the plan of care is set forth at § 484.18. We propose to revise the contents of this section, and place them in a new condition, ''Care planning and coordination of services'' (proposed § 484.60). This condition would contain four standards that reflect the interdisciplinary approach to home health care delivery. The standards are discussed in detail below.

This proposed COP would first state the fundamental requirement that the patient's plan of care must specify the care and services necessary to meet the patient's specific needs as identified by the physician and in the comprehensive assessment, and the measurable clinical outcomes that the HHA expects will occur as a result of implementing the plan of care. Again, a clinical outcome can be defined as a change in an individual's health between two or more points in time. We would retain the existing requirement that patients are accepted for treatment on the basis of a

reasonable expectation that the patient's medical, nursing, and social needs can be met adequately by the agency in the patient's place of residence.

In accordance with our goal of eliminating prescriptive requirements that do not directly relate to patient care, we have simplified the plan of care standard at existing § 484.18(a). The first standard under this condition, ''Plan of Care,'' set forth at proposed § 484.60(a), would require that all home health services must follow a written plan of care established and periodically reviewed by a doctor of medicine, osteopathy, or podiatric medicine in accordance with § 409.42. We would specify that all patient care orders must be included in the plan of care. We believe that our proposal would decrease the burden on HHAs and would allow agency staff to develop care plans that best suit the needs of the patients they serve.

Under the second proposed standard, ''Review and revision of the plan of care'', we would add to the language at existing § 484.18(b). The current requirement that the physician and the HHA review the plan of care as frequently as the patient's condition requires but not less than once every 62 days would be retained, with the additional clarification that this period begins with the date of start of care. We would continue to require that the HHA promptly alert the physician to any changes in the patient's condition that suggest a need to alter the plan of care. We would also extend the current requirement to specify that the HHA must promptly alert the physician if measurable outcomes are not being achieved. If measurable outcomes are not being achieved, the HHA must review, assess, and document the patient's responses to his or her current medical and environmental situation (including barriers to care), and implement a physician's revised plan of care as often as necessary to meet the patient's needs. At a minimum, revised plans of care should be established and implemented when a patient experiences significant changes in his or her medical condition or functional capacity. An example of an environmental situation that would be considered a barrier to care would be a patient who was not receiving proper nutrition. In such a case, the agency staff would document the situation and revise the plan of care accordingly. We believe that these requirements would reflect our outcome-oriented approach to patient care in that they would require the HHA to focus on the patient's responses to treatment decisions. Additionally, these requirements would not impose a burden on HHAs since agencies are already required to complete a plan of care for each patient. These requirements would be set forth at proposed § 484.60(b)(1). We are soliciting comments on the need for frequent regular physician reviews of plans of care for patients who are only receiving personal care services.

Under § 484.60(b)(2), we propose to require that a revised plan of care must include current information from the patient's comprehensive assessment and information concerning the patient's progress toward outcomes specified in the plan of care. We are soliciting comments on the utility of adding an additional requirement that would require the original plan of care that initiates care to be reviewed and revised in a timely manner consistent with the patient's immediate needs, but no later than 5 to 10 working days after the completion of the comprehensive assessment. This would ensure that the plan of care would be revised to reflect the incorporation of the completed comprehensive assessment, which must be completed in a timely manner consistent with the patient's immediate needs, but no later than 5 working days after the start of care. This additional requirement would ensure the link between the completed comprehensive assessment and a revised plan of care.

In the third standard, ''Conformance with physician orders'', we would retain language at existing § 484.18(c). In December 1994, we revised this standard to require that oral orders be put in writing and signed and dated with the date of receipt by the registered nurse or qualified therapist responsible for furnishing or supervising the ordered services (59 FR 65482). We also provided that oral orders are only accepted by personnel authorized to do so by applicable State and Federal laws and regulations as well as by the HHA's internal policies. We would include these standards in the Care planning and coordination of services condition under proposed § 484.60(c).

We propose to add a new standard, Coordination of care, at § 484.60(d). This standard would incorporate provisions at existing § 484.14(g) (Organization, services, and administration, Standard: Coordination of patient services), which requires that all personnel furnishing services maintain liaison to ensure that their efforts are coordinated effectively and support the plan of care, and that the HHA must document such liaison. Our proposed standard would go beyond this requirement by linking the level of the coordination of services, caregivers and the patient to identifiable care need and barriers to care and by requiring HHAs to adjust the degree of coordination to meet the needs of the patient. Specifically, we would require the HHA to maintain a system of communication and integration of services, whether provided directly or under arrangement, that ensures the identification of patient needs and barriers to care, the ongoing liaison between all disciplines providing care, and the contact of the physician for relevant medical issues. Additionally, we would require the HHA to identify the level of coordination necessary to deliver care to the patient and involve the patient and the caregiver in the coordination of care.

We believe that this standard is appropriate for a number of reasons. Since a home care patient may encounter many services delivered at different times by a variety of individuals with different skills, efficient communication and integration among members of the home health team is essential in responding to patient needs in a timely and effective manner. Further, effective coordination of services is necessary to avoid duplicative or conflicting services. Finally, we recognize that an interdisciplinary approach to the delivery of home health services reflects actual practice for most home health agencies, and we believe that, when possible, our regulations should coincide with current industry practice.

4. Quality Assessment and Performance Improvement (Proposed Section 484.65)

We are proposing to eliminate two conditions of participation, existing § 484.52, Evaluation of the agency's program, and existing § 484.16, Group of professional personnel, and replace them with a single, new quality assessment and performance improvement condition of participation. Existing regulations for HHAs do not provide for the operation of a quality assessment and performance improvement program whereby the HHA examines its methods and practices of providing care, identifies opportunities to improve its performance, and then takes actions that result in better outcomes of care and satisfaction for the HHA's patients. In light of our intention to raise the performance expectations for HHAs seeking entrance into the Medicare program as well as those currently participating, HCFA is proposing that each HHA develop, implement, and maintain an effective, data-driven quality assessment and performance improvement program. We believe this

requirement would stimulate an HHA to continuously monitor and improve its own performance and to be responsive to the needs, desires, and satisfaction of its patients. This proposed new requirement epitomizes the approach of these new COPs in that it provides a constant expectation for improved performance, in contrast to the current approach that only sets a floor of structural and procedural requirements that are intended to be surrogate measures for ensuring quality. This condition is intended to set up a self-sustaining system for improvement, under which an HHA monitors its performance to a point that surveyor findings would confirm an HHA's own assessment of where performance improvements are needed.

We have not prescribed the structures and methods for implementing this requirement, and have focused the condition of participation on the expected results of the program, that is, quality indicators and other outcome-oriented measures. This provides flexibility to the HHA, as it is free to develop a creative program that meets the HHA's needs and reflects the scope of its services.

Currently, the first COP that addresses quality of care (existing § 484.52, Evaluation of the agency's performance), provides for the evaluation of the agency's total program at least once a year. The agency must have written policies requiring the evaluation, the evaluation must include a review of the HHA's policies and administrative practices, and the results of the evaluation must be separately recorded and maintained as administrative records. The agency must also review a sample of open and closed clinical records at least on a quarterly basis. The second condition of participation that addresses quality of care (existing § 484.16, Group of professional personnel), requires a group of professional personnel, which includes at least one physician and one registered nurse, to establish and annually review the agency's policies governing the scope of services offered, admission and discharge policies, medical supervision of plans of care, clinical records, personnel qualifications and program evaluation. This group is required to meet frequently to advise the agency on professional issues, to participate in the evaluation of the agency's program and assist in liaison functions. Minutes of the group's meetings must be documented. These requirements focus on the meetings and documentation of the agency's evaluation of their quality of care and do not account for the outcome of these activities.

Instead of continuing to prescribe the structures and processes by which an HHA evaluates its services, we have identified the outcomes expected of an agency that assesses its performance and improves the services that it provides to beneficiaries and set forth under proposed § 484.65 the required major components of an effective quality assessment and performance improvement program. Our expectation is that the HHA will successfully operate a continuous quality assessment and performance improvement program on behalf of its beneficiaries. We believe this is a reasonable expectation, for which the HHA can and should be held accountable.

Previously, the only motivation for quality improvement for some HHAs was the adverse effect of having been found by surveyors to be out of compliance with one or more conditions of participation and threatened with termination from the Medicare program. With an effective quality assessment and performance improvement program, the HHA can identify and reinforce the activities that it is doing well and seek out and respond to opportunities for improvement on a continuous basis. The desired outcome of this proposed requirement is that the HHA itself, rather than the survey process, will be the driving force for continuous improvements, enabling HCFA to focus its resources on supporting that effort and on HHAs that fail to meet the requirements, even after efforts have been made to improve performance.

The proposed condition requires the HHA to develop, implement, and evaluate an effective, data-driven quality assessment and performance improvement program. The program must reflect the complexity of HHA's organization and services (including those provided directly or under arrangement). The HHA must take actions that result in improvements in the HHA's performance across the spectrum of care.

The first standard at proposed § 484.65(a) requires that an HHA's quality assessment and performance improvement program must include, but not be limited to, the use of objective measures to demonstrate improved performance with regard to:

(1) Quality indicator data (derived from patient assessments) to determine if individual and aggregate measurable outcomes are achieved compared to a specified previous time period. The terms ''quality indicators,'' ''performance measures,'' and ''outcome measures'' are often used interchangeably, though technically, they vary somewhat in meaning. Regardless, they all refer to attributes of care and satisfaction that can be used to gauge quality of care in specific aspects of care. For example, the degree and rate of improvement in a functional area (such as the ability to walk after a hip replacement) can be shown to be a quality indicator. The method of defining and measuring that improvement is the ''performance measure'' or ''outcome measure.'' These measures assign a specific value to the care dimension being measured. The appropriateness of the combination of services reflected on the plan of care, the effectiveness of the communication among the interdisciplinary team, or the competency of the mix of professionals used on the team to implement the services could all be possible indicators of the outcome-oriented performance expectations that should stimulate ongoing quality improvement in home health care delivery.

Some measures, though, are of processes of care that are predictive of outcomes of care. These process measures quantify one or more dimensions of the manner in which care is actually provided or administered (or negatively, is not provided or administered). A process measure such as the number of times a service is provided may be directly related to the rate of improvement (or lack of improvement) of the patient. So, a valid and reliable process measure can be shown to be predictive of patient outcomes, therefore, a quality indicator.

The core standard assessment data set, described in detail elsewhere in today's issue of the Federal Register, contains tested and validated indices of functional status over time and satisfaction of patients that have been shown to reflect quality of care. Once we have completed the rulemaking necessary to implement the use of this data set, each HHA will collect and evaluate these standard data as a part of providing care and managing the quality assessment and improvement program, but will not be required to report it. This information will help the HHA to improve its services and the outcomes and satisfaction that patients experience. Later, when we subsequently implement the requirement to begin reporting the quality indicator data, the HHA will be able to receive the aggregated and analyzed data from the universe of HHAs to compare its performance with others.

(2) Current clinical practice guidelines and professional practice standards applicable to home care. Contemporary care practices in an increasingly complex and fragmented

health care environment are rapidly changing. Home care is now provided routinely to very ill persons and persons with severe physical, medical, and other challenges. We expect an HHA to pursue the latest clinical practice guidelines and professional standards for use in its quality assessment and performance improvement program. Continuous improvement is only possible through the identification and use of continuously improved information, techniques, and practices. Much of this information also can be used by patients and their families to enable them to be more independent and play a more effective role in the home care process. While HCFA is not imposing any specific standards of practice, this proposed requirement establishes the expectation that the HHA will seek and utilize the latest standards as a routine part of its daily business.

(3) Utilization data, as appropriate. HHAs currently collect and monitor utilization data in order to evaluate their fiscal and competitive well-being. This information can also be used to evaluate the quality of care, as HHAs become aware of how their performance compares with other HHAs. Eventually, we intend that the HHA will use the utilization data from its own practices to compare with other HHAs across the nation. The purpose of including utilization data in the HHA's quality assessment and performance improvement program is to help the HHA ensure the patient receives only the number of visits that are necessary to achieve needed and desired outcomes. Utilization data will also be used as part of HCFA's external quality assurance monitoring, enabling the agency to target reviews of HHAs whose utilization data suggest, for example, that patients may be receiving fewer (or more) visits than necessary to achieve expected outcomes.

(4) Patient satisfaction measures. Beneficiary satisfaction with home health services is an important element of a quality assessment and performance improvement program. Under our proposal, an HHA would develop and implement specific measures on an ongoing basis to determine from patients and their families whether they are satisfied with services provided and outcomes achieved and the extent to which the HHA respected their rights. We expect that an HHA would use this information to search for opportunities to improve services and patient satisfaction. We do not intend to prescribe to specific tools for measuring patient and family's views, but we do intend to ask the HHA during a survey to demonstrate its patient rights and satisfaction measurement system and how it is used as part of the overall internal quality assessment and performance improvement program.

(5) Effectiveness and safety of services (including complex high technology services, if provided), including competency of clinical staff, promptness of services, and whether patients are achieving treatment goals and measurable outcomes. For patients to experience the needed and desired outcomes that the Medicare home health benefit is intended to achieve, staff must be able to demonstrate the skills and competencies necessary to enable patients to achieve needed and desired outcomes. The HHA is expected to include data-based, criterion-referenced performance measures of staff skills, to utilize that data to ensure that staff maintain skills, and to provide training as new techniques and technologies are introduced and as new staff arrive. We intend that the HHA would be able to demonstrate that it has a system of appropriate complexity for keeping track of the skills and competencies of the staff and that effectively identifies and addresses training needs. These ''data'' should be an integral part of the HHA's internal quality assessment and performance improvement program, providing continuous feedback on staff performance. The physicians and other staff are in a unique position to provide the HHA's management with structured feedback on the performance of the HHA and ways in which the performance can be improved. The physicians and other staff are customers also, whose needs and contributions to quality improvements are significant. The HHA's internal quality assessment and performance improvement program is expected to view staff as full partners in quality improvement, and we expect the HHA to demonstrate how physicians and staff contribute to the internal quality improvement of the HHA. This proposed requirement is linked directly to the proposed requirement that the HHA include in its quality assessment and performance improvement program current clinical practice guidelines and standards of practice.

Thus, we expect that the HHA will immediately correct problems that are identified through the quality assessment and performance improvement program that actually or potentially affect the health and safety of patients. For example, if the quality assessment and performance improvement program identifies problems with the accuracy of medication administration, it is not enough for the HHA to consider this area as a candidate for an improvement program that may or may not be chosen from a list of potential projects. Rather, since the accuracy of medication administration is critical to the health and safety of patients, the HHA must intervene with a correction and improvement approach immediately.

When we use the word ''measure,'' we mean that the HHA must use objective means of tracking performance that enable both the HHA and the survey agency to identify the differences in performance between two, points in time. For example, a measure that states an HHA is ''doing better'' as a result of an improvement approach would be unacceptable. There must be identifiable units of measure that any reasonably knowledgeable person would be able to distinguish as evidence of change. Not all objective measures must have been shown to be valid and reliable (that is, subjected to scientific development), to be useable in improvement approaches, but they must at least identify a start point and end point stated in objective terms that actually relate directly to the objectives and expected/desired outcomes of the improvement program.

Under the second standard at § 484.65(b), we are proposing that the HHA must take actions that result in performance improvements and must track performance to assure that improvements are sustained over time. This requirement links the quality assessment and performance improvement program to a pattern of actions over time. The focus is on the pattern of behavior recognized by the HHA and how the HHA used its own experience to continuously strive for improvements.

The third standard under the Quality Assessment and Performance Improvement Program at proposed § 484.65(c) states that the HHA must set priorities for performance improvement, considering prevalence and severity of identified problems, and giving priority to improvement activities that affect clinical outcomes. However, any identified problems that directly or potentially threaten the health and safety of patients must be corrected immediately. Prioritizing areas of improvement is essential for the HHA to gain a strategic view of its operating environment and to ensure the consistent quality of care provided over time. Overall, an HHA would be expected to give priority to improvement activities that most affect clinical outcomes. Conditions that may threaten the health and safety of patients must be immediately and

directly addressed when they are identified.

The fourth standard under the Quality Assessment and Performance Improvement COP, at proposed § 484.65(d), would require the HHA to participate in periodic, external quality improvement reporting requirements as may be specified by HCFA. An example of participation in an external quality improvement activity would be the future requirement for the HHA to report quality indicator data (as discussed elsewhere in today's issue of the Federal Register). Participation in the survey process is another example. A different example might be that the Secretary, reviewing the quality indicator data (or other information), decides to embark on a national project to improve the management of multiple medications from multiple doctors of HHA patients. This proposal would require the HHA to participate in this external quality improvement project. Another example might be a national effort to increase the number of HHA patients who receive flu shots each year. This proposed requirement is entirely consistent with HCFA's strategic plan to improve the health status of Medicare and Medicaid beneficiaries, and many of these projects will reach beneficiaries well beyond individuals being served under specific benefit programs such as home health.

Development of the revised COPs is part of the Administration's reinventing government initiative. The COPs were revised to emphasize a focus on outcomes of health care rather than process and procedural requirements. Our revitalized approach reflecting the use of quality indicators and outcome measures as part of future external quality improvement reporting requirements as specified by the Secretary stem from the statutory authority governing the HHA COPs. Section 1891(b) of the Act states, ''It is the duty and responsibility of the Secretary to assure that the conditions of participation * * * and the enforcement of such conditions * * * are adequate to protect the health and safety of individuals under the care of a home health agency and to promote the effective and efficient use of public moneys.'' Congress mandated broad authority to allow the Secretary to keep up with the myriad of changes in quality health care delivery that reflect the state of the art. The use of outcome measures is a significant feature of accreditation for organizations such as the Joint Commission on Accreditation of Healthcare Organizations' (JCAHO) Agenda for Change and Community Health Accreditation Program's (CHAP) Benchmarks for Excellence in Home Care.

The use of quality indicators and outcome measures as part of external quality improvement reporting requirements stems, in part, from the statutory requirement that surveys of HHAs employ quality indicator data. Specifically, section 1891(c)(2)(C)(i)(II) of the Act states, ''A standard survey conducted under this paragraph with respect to an HHA shall include (to the extent practicable), for a case-mix stratified sample of individuals furnished items or services by the agency * * * a survey of the quality of care and services furnished by the agency as measured by indicators of medical, nursing, and rehabilitative care.''

Looking beyond the actual service delivered toward the outcome resulting from that service allows the HHA the opportunity to incorporate that information to change patterns of behavior or policies and continually improve future performance. Although reaching the desired outcome is beneficial, the revised approach focuses on continuous change in an HHA's behavior over time. The regulatory approach to outcome measures is not predicated on punishing those who do not reach desired outcomes, but on examining how the HHA used its own experience to change behavior and ultimately improve performance over time.

Finally, this condition includes a standard about infection control at proposed § 484.75(e). We expect the HHA to maintain an effective infection control program as part of its overall quality assessment and performance improvement program. We recognize that an HHA cannot be directly responsible for the maintenance of an infection free home environment, especially since the HHA cannot be physically present in the home at all times. However, it can be responsible for (1) ensuring that all staff know and use current best practices themselves to ensure they are not the source of the spread of infection in the course of providing home health services, and (2) on educating families and other caregivers on best practices for the control of the spread of infections within the home during the course of the family/caregivers'' interactions with the patients. One example of the use of ''current best practices'' is the universal precaution of the use of gloves when handling blood or blood products. HCFA is not proposing any specific approaches to meeting this requirement, but would expect to see clear evidence that the HHA aggressively seeks to minimize the spread of infection through the use of infection control techniques by its staff and through the efforts made to help families and caregivers to minimize the spread of infection.

5. Skilled Professional Services (Proposed Section 484.70)

Existing regulations at §§ 484.16, 484.30, 484.32, and 484.36 specify standards that identify detailed tasks that must be performed by agency staff in the provision of skilled nursing services, therapy services, and medical social services respectively.

We propose to delete §§ 484.16, 484.30, 484.32, and 484.36 and replace them with a more simplified new condition on skilled professional services. Instead of specifically identifying tasks, we are broadly describing the expectations of the skilled professionals who participate in the interdisciplinary team approach to home health care delivery.

We would specify that skilled professionals who provide services to HHA patients directly or under arrangement must participate in all aspects of care, including an ongoing interdisciplinary evaluation and development of the plan of care, and be actively involved in the HHA's quality assessment and performance improvement plan. We are reducing the concentration on process requirements and shifting the focus to outcomes. The expected outcome is the coordinated, comprehensive, interdisciplinary delivery of appropriate and effective skilled professional services delivered and supervised by health care professionals who practice under State licensure requirements and the HHA's policies and procedures. Skilled professional services for purposes of this section include: skilled nursing care, physical therapy, speech language pathology, occupational therapy (as defined in § 409.44) and medical social services and home health aide services (as defined in § 409.45).

At proposed § 484.70(a), we provide that skilled professional services are authorized, delivered, and supervised (that is, given authoritative procedural guidance) only by health care professionals who meet the appropriate qualifications specified under § 484.115 and who practice under the HHA's policies and procedures. We believe that this approach to supervision provides clarity to the current definition.

We are proposing to require that an HHA ensure that a majority of at least 50 percent of the total skilled professional services are routinely provided directly by the HHA. We are

proposing to phase in this new approach over 3 years. In the first year, HHAs would be required to ensure that at least 30 percent of the skilled professional services are provided directly. In the second year, HHAs would be required to ensure that at least 40 percent of skilled professional services are provided directly. By the third year of enactment, HHAs would be required to ensure that at least 50 percent of the skilled professional services are provided directly.

We are requesting comments on the use of a standard that would limit the use of contract care by Medicare certified HHAs. We believe such limits may be needed as a means of preventing the establishment of ''shell'' HHAs that are merely a fax machine and a nurse used as a billing system. Further, we believe that this type of standard would protect against provider fraud and abuse. Mass delegation of care has led to problems in evaluating the accountability of providers. This is a program integrity approach that seeks to ensure continuity of care via the significant use of contractual care in the decentralized environment of home health delivery.

Medicare makes a distinction between providing services directly, as opposed to providing services under arrangement. The most common way services are provided directly is through the use of employees. The common law definition of ''employee'' fundamentally relates to whether a person is under control by the entity or individual providing the services, so by and large producing a W–2 form would constitute providing the services directly. The ''Stark Provisions'' at section 1877(h)(2) of the Act references the IRS ''employee'' definition. Section 1877(h)(2) provides that—

An individual is considered to be ''employed by'' or an ''employee of'' an entity if the individual would be considered to be an employee of the entity under the usual common law rules applicable in determining the employer-employee relationship (as applied for purposes of section 3121(d)(2) of the Internal Revenue Code of 1986).

We are exploring a more concise method of defining the provision of direct services as opposed to services provided under arrangement.

We believe that the excessive use of contracting could be an indication that an HHA may be exceeding its patient capacity, leading to possible instability that can result in disruptions to patient care. Excessive contracting is also a potential indication that the HHA may not be exercising full control over quality of care. This performance safeguard seeks to ensure continuity and quality of care through the restriction of the significant use of contracted care in home care.

A major home health care association has supported the establishment of limits on Medicare certified HHAs' use of contracted care as a way to establish performance expectations for the quality of care provided. The proposed direct services requirement is an attempt to address our concerns with the growth in ''shell'' operations and provider accountability. It is important to note that HHAs currently report employment data on their cost reports. We welcome comments on the percentage approach to the proposed direct services standard to control the excessive use of the contracting of services. We welcome comments on this shift in our approach and on any concerns HHAs may have regarding their ability, both operationally and financially, to undertake this new approach.

6. Home Health Aide Services (Proposed Section 484.75)

Section 1891(a) of the Act requires the Secretary to establish minimum standards for home health aide training and competency evaluation programs. Section 1861(m)(4) of the Act requires Medicare covered home health aide services to be furnished by an individual who has successfully completed a training and/or competency evaluation program that meets the requirements established by the Secretary.

Currently, the condition of participation concerning home health aide services is set forth at § 484.36, (Condition of Participation: Home health aide services). For the most part, we would retain the existing requirements although in some cases we have made organizational or editorial changes in the interest of brevity or clarity. In addition, we are soliciting comments on some possible alternatives for future revisions. Under our reorganization scheme, this condition would be located at proposed § 484.75.

Standard: Home Health Aide Qualifications

Currently, provisions concerning the qualifications for home health aides are set forth at § 484.4, Personnel Qualifications. As discussed in detail below, we are proposing substantial revisions to the personnel qualifications section. In light of our proposed revisions and our reorganization of part 484, we believe that the qualifications for home health aides would be more appropriately located in this section. Thus, at proposed § 484.75(a) we would provide that a qualified home health aide is an individual who has successfully completed a State-established or other training program that meets the requirements of proposed § 484.75(b) and a competency evaluation program or State licensure program that meets the requirements of proposed § 484.75(c), or a competency evaluation program or State licensure program that meets the requirements of proposed § 484.75(c), or has completed a nurse aide training and/or competency evaluation program approved by the State as meeting the requirements of existing §§ 483.151 through 483.154 and is currently listed in good standing on the State nurse aide registry. We are soliciting comments on our proposed change to the home health aide personnel qualification, which would include the interchangeable paraprofessional training and/or competency standards for home health aides and nurse aide requirements at requirements at existing §§ 483.151 through 483.154 (part of the Long-Term Care Facilities Requirements for Participation). The home health aide workforce is ridden with high turnover rates. We believe that the proposed changes to the home health aide personnel qualifications yield flexibility to HHAs in their ability to retain equally competent paraprofessionals from a wider pool of employment prospects.

Under proposed § 484.75(a)(2), we would retain (with clarification) the current personnel qualification requirements governing home health aide employment status during a continuous period of 24 consecutive months. An individual is not considered to have completed a training and competency evaluation program or a competency evaluation program if, since the individual's most recent completion of this program(s), there has been a continuous period of 24 consecutive months during none of which the individual furnished services described in § 409.40 of this chapter for compensation. If an individual has not furnished services described in § 409.40 for compensation during a continuous period of 24 consecutive months, then the individual must complete another training and competency evaluation program or competency evaluation program as described in paragraph (a)(1) of this section.

Standard: Home Health Aide Training

We propose to retain the same requirements for content and duration of training as those under the current requirements at § 484.36(a)(1). However, we propose more concise language.

Specifically, at proposed § 484.75(b)(1), we would provide that the home health aide training must include classroom and supervised practical training that totals at least 75 hours. A minimum of 16 hours of classroom training must precede a minimum of 16 hours of supervised practical training.

Proposed § 484.75(b)(1)(i) would clarify provisions regarding communication skills currently located at § 484.36(a)(1)(i) (Standard: Home health aide training-(1) Content and duration of training). We would provide that communication skills include the ability to read, write, and make brief and accurate oral and written presentations to patients, caregivers, and other HHA staff. We propose to retain current requirements under § 484.36(a)(1) (ii) through (xii) at proposed § 484.75(b)(1) (ii) through (xii) (Standard: Content and duration of training). We propose to retain current § 484.36(a)(1)(xiii) with clarification at proposed § 484.75(b)(1)(xiii). We propose to modify the current language, ''Any other task that the HHA may choose to have the home health aide perform'' by adding the following: ''The HHA is responsible for training the home health aide, as needed, for skills not covered in the basic checklist.''

At proposed § 484.75(b)(2) and (3), we would essentially retain the provisions governing conduct of training by organizations and qualifications of instructors under existing §§ 484.36(a)(2) (i) and (ii).

At proposed § 484.75(b)(4), we would essentially retain the documentation of training requirement under existing § 484.36(a)(3) to include State approved nurse aide training and competency evaluation as reflected in the definition of the personnel qualifications for home health aides.

We propose to separate existing § 484.36(b)(Standard: Competency evaluation and inservice training) into two separate standards, Competency Evaluation and Inservice Training. These standards would be set forth at proposed § 484.75(c) and (d) respectively.

Standard: Competency Evaluation

In order to simplify this standard, at proposed § 484.75(c) we would combine the current requirements for an HHA's responsibility for the applicability of the competency evaluation requirements under existing § 484.36(b)(1) and the limitations on the applicability of the competency evaluation requirements for personal care attendants under a State Medicaid Personal Care benefit under existing § 484.36(e)(2). An individual may furnish home health services on behalf of an HHA only after that individual has successfully completed a competency evaluation program as described in this section. We propose that the HHA must ensure that all individuals who furnish home health aide services to patients meet the competency evaluation requirements of this section. The only exception would be for personnel care aides who exclusively provide personal care services to Medicaid patients under a State Personal Care benefit.

We propose to combine the requirements for competency evaluation under existing § 484.36(b)(2) with the subject area requirements under existing § 484.36(b)(3)(iii). We propose the competency evaluation must address each of the subjects listed in § 484.36(a)(1) (ii) through (xiii). Subject areas § 484.36(a)(1) (iii), (ix), (x), and (xi) must be evaluated by observing the aide's performance with a patient. The remaining subject areas may be evaluated through written examination, oral examination or after observation of the home health aide with a patient. These provisions would be set forth at proposed § 484.75(c)(2).

At proposed § 484.75(c)(3) we would to retain the current requirements for the conduct of competency evaluations by organizations under § 484.36(b)(3)(i). A competency evaluation program may be offered by any organization except as specified in existing § 484.36(a)(2)(i).

At proposed § 484.75(c)(4) we would retain the current requirement at § 484.36(b)(3)(ii) that the competency evaluation must be performed by a registered nurse. However, we recognize the interdisciplinary approach to home health care and propose the requirement that the registered nurse should perform the competency evaluation in consultation with other skilled professionals, as appropriate. At proposed § 484.75(c)(5), we would retain the current requirements for competency determinations under § 484.36(b)(4).

At proposed § 484.75(c)(6), we propose to retain the current requirements for documentation of competency evaluation currently located at § 484.36(b)(5). We propose to delete the effective date requirements under existing § 484.36(b)(6) because they refer to a timeframe in 1990 and are no longer necessary.

Standard: Inservice Training

At proposed § 484.75(d) we would retain the requirements for the amount of in-service training located at existing §§ 484.36(b)(2) (ii) and (iii). We propose to clarify the 12-month period to address calendar year and anniversary date issues. We would combine the current requirements to propose that the home health aide must receive at least 12 hours of inservice training in a 12-month period. During the first 12 months of employment, hours may be prorated based on the date of hire. The in-service training may occur while the aide is furnishing care to a patient.

At proposed § 484.75(d)(2) we would revise the current requirements for the conduct of inservice training by organizations under § 484.36(b)(3)(i). We would provide that an inservice training program may be offered by any organization except as specified in § 484.75(b)(2).

We propose to revise the current requirement for instructors of inservice training under § 484.36(b)(3)(ii). The current requirement states that inservice training generally must be supervised by a registered nurse with specific experience requirements. Thus, at proposed § 484.75(d)(3), we would provide that the inservice training must be supervised by a registered nurse. The revised language does not include the current experience requirements because we believe it is appropriate to give the HHA flexibility to utilize qualified professionals to instruct and evaluate aides in an appropriate manner in order to meet the outcome which is ensuring that the individuals who furnish home health aide services on its behalf meet the competency evaluation requirements of this section.

Standard: Home Health Aide Assignments

At proposed § 484.75(e), we would retain the revisions to existing § 484.36(c), Standard: Assignments and duties of the home health aide, published in December 1994 (59 FR 65482), with one additional requirement. Specifically, at proposed § 484.75(e)(3), we propose to restore the requirement that home health aides must report changes in the patient's medical, nursing, rehabilitative, and social needs to the registered nurse or other appropriate skilled professional and complete appropriate records in compliance with the HHA policies and procedures. This requirement was inadvertently removed in the December 1994 final rule. Home health aides may observe changes in patient needs that are crucial to future treatment decisions and should be reported to the appropriate professional in order to implement effective and appropriate changes in care.

Standard: Supervision

At proposed § 484.75(f), we would retain the home health aide supervision

requirements under existing §§ 484.36(d) (1), (2), (3), and (4).

We have concerns about whether quality supervision can be done without the requirement of an aide's presence performing a direct patient service. We have discussed several alternatives, including a requirement that the registered nurse or appropriate skilled professional must make an onsite visit to the patient's home while the home health aide is providing patient care no less frequently than every 30 days. We welcome comments on changing the current indirect supervision requirement and will address the issue in the final rule.

We are also soliciting comments on the idea of focusing aide supervision on individual aides rather than each patient. The purpose of the supervisory visit is to determine if services are being provided, to assess relationships with the patient, competency with tasks, and evaluation of the employee's contribution to the organization's goals to provide high quality care.

Generally, assessing patient needs, developing a plan of care, care coordination, and other skilled visits are performed at a frequency that generally exceeds a biweekly aide supervision schedule. These visits traditionally encompass supervision functions by the nature of being home and ascertaining whether the patient's needs are being met. Therefore, the current supervisory requirements may not add the quality measure of care and may duplicate functions that are inherently provided by the interdisciplinary team. Aides who have performed well and have satisfactory ratings may not need to be supervised as often as new or unsatisfactory rated aides. Centering the supervisory visits on an individual aide rather than on a patient would allow aides to be included in the HHA's human resource management policies that apply to all staff within the organization, and encourage the employer-employee relationship to reflect quality of patient care.

We welcome comments on the following draft standard and will address the issues in the final rule:

Standard: Paraprofessional Supervision

(1) If the patient receives skilled care and paraprofessional services, or paraprofessional services without skilled care, the HHA must not only ensure that the aide is competent to perform the necessary skills (see competency evaluation), but also evaluate the aide's ability to perform such functions on a continual basis. Supervision must be provided by the appropriate professional to ensure the health and safety of the patient, especially when specialized tasks and delegated functions have been added to the competency subjects.

(2) The frequency of routine supervision is established by the HHA's policies which promote high quality patient care through the employment evaluation processes. These evaluation tools should begin at the time of employment and are evaluated thereafter on a regular employment basis, allowing for variations to accommodate time in service with the hiring HHA and the employees' recorded evaluation ratings with that HHA. Employment status should be calculated by the most appropriate method for the organization to ensure regular evaluations. HHAs who arrange for aide services through a non-Medicare certified HHA must ensure equivalent supervision requirements in the arrangement contract with the primary HHA responsible for compliance with these requirements.

(3) The evaluation process includes, but is not limited to, measuring the aide's continual ability to perform routine tasks, specialized tasks, reporting problems to the HHA with care plan tasks, recognizing and reporting barriers to the anticipated outcomes, and patient satisfaction issues.

(4) Nonroutine supervision is also essential to monitor the need for paraprofessional care plan revisions. For example, HHAs could perform spot home visits (direct or indirect observation), telephone interviews, and other mechanisms to ensure protection of the health and safety of the patient and respect for patient's privacy and property. Nonroutine supervisory techniques provide a forum for open and frequent communication to obtain essential and timely feedback. Feedback can also be obtained from other care providers (formal and informal), significant family, and others deemed necessary to properly evaluate the paraprofessional.

(5) In accordance with HHA policies, the aide should also provide feedback on his or her employment environment and the evaluation processes.

Additionally, we welcome comments on the efficacy of using competent individuals other than a registered nurse to perform training, competency evaluation, and assignment or supervision functions for home health aides.

Standard: Medicaid Personal Care Aide Services—Medicaid Personal Care Benefit

At proposed § 484.75(g) we would retain the current requirements under § 484.36(e) (1) and (2). A Medicare certified HHA that provides personal care aide services to Medicaid patients under a State Medicaid Personal Care Benefit must determine and ensure the competency of individuals who perform those Medicaid approved services.

Alternatives for Future Revisions

Home care patients are a vulnerable and confined population. It is necessary to ensure the provision of safe quality care to patients in their homes. We are proposing one specific measure in this proposed rule—a criminal background check of home health aides as a condition of employment (§ 484.75(h)). In addition, we are considering the utility of several other process measures that could be included in this regulation that are predictive of the desired outcome of delivering safe quality care in the patient's home. One possibility would be to adopt the language that is currently used in the Conditions of Participation for Intermediate Care Facilities for the Mentally Retarded (ICF/MR) at § 483.420, modified to reflect the HHA environment and population served. The ICF/MR provisions governing client protections at §§ 483.420(d)(1)(iii), (2), (3), and (4) state:

- The facility must prohibit the employment of individuals with a conviction or prior employment history of child or client abuse, neglect or mistreatment.
- The facility must ensure that all allegations of mistreatment, neglect or abuse, as well as injuries of unknown source, are reported immediately to the administrator or to other officials in accordance with State law through established procedures.
- The facility must have evidence that all alleged violations are thoroughly investigated and must prevent further potential abuse while the investigation is in progress.
- The results of all investigations must be reported to the administrator or designated representative or to other officials in accordance with State law within 5 working days of the incident and, if the alleged violation is verified, appropriate corrective action must be taken.

Proposing criminal background checks as a condition of employment for home health aides is one vehicle to guard beneficiaries from abusive practices in the sanctity of their homes.

We are soliciting comments on the costs and benefits of requiring criminal background checks for home health aides and the possible adoption of the additional patient safeguards modified to reflect the HHA environment.

D. Proposed Subpart C—Organizational Environment

1. Compliance with Federal, State, and Local Laws (Proposed Section 484.100)

Currently, provisions concerning compliance with Federal, State, and local laws are located at § 484.12, Condition of Participation: Compliance with Federal, State, and local laws, disclosure of ownership information and accepted professional standards and principles. We would retain most of the provisions contained in this condition with minor changes, which are discussed in detail below. Under our proposed reorganization scheme, discussed above, this condition would be set forth at § 484.100.

Under the first standard, compliance with Federal, State, and local laws and regulations, at proposed § 484.100(a), we would revise the language at existing § 484.12(a). That is, we would require that the HHA and its staff must operate and furnish services in compliance with all Federal, State, and local laws and regulations applicable to home health agencies. If a State has established licensing requirements for HHAs, all HHAs must be approved by the State licensing authority as meeting those requirements whether or not they are required to be licensed by the State. The Secretary may find an HHA to be out of compliance with these conditions of participation if the HHA is found out of compliance with any Federal, State, or local law or regulation by the appropriate enforcement agency for that law or regulation and the Secretary determines that the law or regulation affects the HHA's ability to deliver home health services safely and effectively. When a facility is actually found out of compliance and is cited by that agency for a violation, HCFA will exercise discretion in determining whether that violation should be cited as a violation under these conditions. Clearly it is not in the interest of patients or providers to decertify facilities or to require corrective action plans for certain reasons (for example, a facility's failure to pay its local property taxes on time or building a fence 3 feet over the property line). We would not cite an agency whose problem was remedied (for example, the facility paid its taxes). However, HCFA intends to cite agencies when their violations of Federal, State, or local laws or regulations affect the health and safety of patients, the ability of HHAs to deliver quality services, the rights and well-being of patients, and/or the management of the agency and its ability to recruit qualified staff. We welcome comments on this interpretation.

Similarly, in the second standard, Disclosure of ownership and management information, we propose to retain the requirements at existing § 484.12(b). We would continue to require that the HHA comply with the requirements of §§ 420.200 through 420.206 regarding disclosure of ownership and control information. Additionally, the second standard would continue to require that the HHA also disclose the following information to the State survey agency at the time of the HHA's initial request for certification, for each survey, and at the time of any change in ownership or management:

- The name and address of all persons with an ownership or control interest in the HHA as defined in §§ 420.201, 420.202, and 420.206.
- The name and address of each person who is an officer, a director, an agent, or a managing employee of the HHA as defined in §§ 420.201, 420.202, and 420.206.
- The name and address of the corporation, association, or other company that is responsible for the management of the HHA, and the name and address of the chief executive officer and the chairperson of the board of directors of that corporation, association, or other company responsible for the management of the HHA.

Existing § 484.12(c) provides that an HHA must comply with accepted professional standards and principles. To reflect an emphasis on the importance of continuity of care and our focus on quality, regardless of the site of service, we propose to move the current provisions at § 484.12(c) and incorporate the performance expectation of the provisions into the quality assessment and performance improvement program. HCFA has long used the term ''in accordance with accepted standards of practice'' in its various provider and supplier requirements both to set a performance expectation and to serve as an enforcement tool should grossly divergent practices be identified in the survey process.

We believe that requiring an HHA to participate in a strong, quality assessment and performance improvement program would stimulate an aggressive effort to identify and use the best practices available for all care providers in the HHA. As discussed above, for the HHA to be successful in its quality assessment and performance improvement program, it will be obliged to seek out best practices continuously. HCFA's survey effort can then be devoted to assessing how the HHA has sought out and adopted best practices in the field as part of the surveyor's evaluation of the quality assessment and performance improvement requirements, rather than HCFA prescriptively defining ''accepted professional standards''.

At proposed § 484.100(c), we would provide that the HHA and its branches must be licensed in accordance with State licensure laws, if applicable, prior to providing Medicare reimbursed services. This provision seeks to ensure that HHA patients receive the same level of quality care from the appropriate personnel at all sites of service. The requirement that HHAs comply with State licensure laws before providing services to Medicare beneficiaries would apply to the HHA as an entity as well as its staff furnishing services to HHA patients directly or under arrangements.

Finally, we propose to move the current requirements at § 484.14(j), Organization, services and administration, Standard: Laboratory services, to proposed § 484.100(d). We believe that the laboratory services standard is a Federal requirement that is better suited under the revised condition of participation governing compliance with Federal, State, and local laws.

2. Organization and Administration of Services (Proposed Section 484.105)

The proposed COP on organization and administration of services would revise existing regulations at § 484.14 (Condition of participation: organization, services and administration) and replace the existing regulations at § 484.38 (Condition of participation: Qualifying to furnish outpatient physical therapy or speech-language pathology services). The proposed new condition simplifies the structure of the current requirements and provides flexibility to the HHA by replacing the current focus on organizational structures with new performance expectations for the administration of an HHA as an organizational entity. With the wide diffusion of home health organization and management structures, it is imperative to ensure accountability within HHAs by setting performance expectations for the clear, unambiguous, and accountable operation of all

services. The overall goal of the proposed condition is clear, accountable organization, management, and administration of an HHA's resources to attain and maintain the highest practicable functional capacity for each patient in terms of medical, nursing, and rehabilitative needs as indicated on the plan of care.

One of the most critical responsibilities for the governing body of the HHA to meet is stated explicitly at the beginning of proposed § 484.105: The HHA is expected to ''attain and maintain the highest practicable functional capacity for each patient * * *'' This language derives from section 1891(c)(2)(C)(i)(I) of the Act, which directs the Secretary to devise a survey process that includes home visits to a case-mix sample of patients ''for the purpose of evaluating * * * the extent to which the quality and scope of items and services furnished by the agency attained and maintained the highest practicable functional capacity of [E]ach such individual * * * '' Thus, the expectation for performance of the HHA, as stated throughout these proposed rules, especially in the comprehensive assessment, care planning and coordination, and quality assessment and performance improvement COPs, is to achieve outcomes of care that are commensurate with a patient's condition and expectations for returning to improved functional status as much as possible. The placement of this requirement in the COP that includes the governing body is intended to express clearly our intention that the responsibility for achieving the best outcomes possible for the patients served lies with the administration of the HHA, including its governing body and administrator.

This requirement lends support to the importance of the HHA using current best practices within a strong quality assessment and performance improvement program. It promotes the HHA's seeking out and using comparative data where available and using its own data compared to previous points in time to demonstrate internal improvements in outcomes over time.

We recognize that there is no single test of this requirement; each patient is unique and the expectations for outcomes vary in every case. Yet, we will expect surveyors to determine that the HHA, overall, has aggressively pursued this statutory expectation for outcomes for patients and either achieves it, or demonstrates its efforts to achieve it when desired outcomes are not successfully achieved.

In the proposed organization and administration of services condition, we revise the current standard on governing body (§ 484.14(b)), retain, with only minor changes, the current standard on services furnished (§ 484.14(a)), retain, with only minor editorial changes, the requirements with respect to services under arrangements that are now stated in § 484.14(h), delete the current standards on administrator (484.14(c)), delete the current standards on supervising physician or registered nurse (§ 484.14(d)), delete the current standards on personnel policies (§ 484.14(e)), delete the current standards on institutional planing (§ 484.14(i)), relocate the existing condition, qualifying to furnish outpatient physical therapy or speech-language (§ 484.38) under this condition, and relocate the current standard on laboratory services (§ 484.14(j)) under the compliance with Federal, State and local laws COP.

In developing the proposed governing body standard, we emphasize the responsibility of the HHA governing body (or designated persons so functioning) for the management and provision of all home health services, fiscal operations, quality assessment, performance improvement, and the appointment of the administrator. We have retained the necessary administrative features that promote and protect patient health and safety from the current standard on governing body at § 484.14(b) while providing flexibility in the actual approach to the performance expectation of the provision of quality care to all patients. Thus, in the proposed governing body standard, the actual approach to the administration of the HHA as an organization is left to the discretion of the governing body of each HHA. The proposed governing body standard reflects our goal of promoting the effective management and administration of the HHA as an organizational entity without dictating prescriptive requirements for how an HHA must meet that goal.

In the proposed governing body standard, the HHA's governing body (or designated persons so functioning) must assume the full legal authority and responsibility to ensure the performance expectation of the sound fiscal operation of the HHA, appoint a qualified administrator who is responsible for the day-to-day operation of the program, and may appoint designated persons to carry out those functions. We believe the proposed standard on governing body encompasses the performance expectation of an HHA administrator and of organizational fiscal operations, and, therefore, propose to delete the current prescriptive standards on the administrator at § 484.14(c) and on institutional planning at § 484.14(i). We propose to replace the current process-ridden institutional planning standard at § 484.14(i) with the performance expectation of the HHA governing body's responsibility for the fiscal operation of the HHA.

We propose to remove the current statutorily based institutional planning requirements from the HHA conditions of participation. Because the HHA conditions of participation are primarily intended to reflect patient health and safety standards, we feel the COPs are an inappropriate location for the institutional planning provisions found under section 1861(z) of the Act. The proposed standard requires the governing body to assume full legal authority and responsibility for fiscal operations and appointment of an administrator who is responsible for the day-to-day operation of the program without specifying the means to achieve the goal. This outcome-oriented approach provides flexibility to the HHA in the administration of the HHA as an organizational entity. However, it is important to note that the statutory requirements of section 1861(z) of the Act continue to apply to an HHA's institutional planning and capital expenditure activities, even though we would not include them in the revised COPs.

The second proposed standard under the organization and administration of services condition would specify that the HHA that accepts the patient is the primary HHA and has the responsibility to meet the care needs of the patient. Primary home health agency means the agency that accepts the patient becomes the primary HHA and assumes responsibility for the interdisciplinary coordination and provision of services and continuity of care, whether the services are provided directly or under arrangement. We are proposing the new primary HHA standard to ensure continuity of quality care. Mass delegation of care has led to problems in evaluating the accountability of providers and quality of care. This standard was proposed to address the problem of HHAs accepting patients for only specific services. For example, one HHA accepts a patient, treats the patient for a specific condition, and then refers the patient to several other agencies for the rest of his or her treatment. Under our proposal, the HHA that accepts a patient would become the primary HHA and would be held responsible for the interdisciplinary coordination and provision of services ordered under the patient's plan of care. We welcome

comments as to whether the primary HHA standard is an appropriate tool to address the problem of mass delegation and fragmentation of care.

We are also proposing a new standard to address the parent/branch relationship. We want to establish clear requirements regarding the parent/branch relationship in order to protect patient health and safety and to ensure a consistent level of care throughout the HHA as an organizational entity. Although the existing regulations define ''branch office'' and ''parent HHA'', we have found that some HHAs have several branch offices that are actually operating as full-fledged HHAs while the parent offices are used as billing shells for the branches. We have concerns about branches, which are not required to independently meet the conditions of participation, acting as an independent HHA and the effect on program integrity and the consistency of quality care provided. We do not anticipate that this standard will disrupt current business practice because the current definitions of parent and branch provide a performance expectation for HHAs as organizational entities as a condition of participation for Medicare certification.

In the proposed rule, we have retained the current definitions, and we are also incorporating the previous definition material into the organization and administration of services COP in order to clarify that this is a management responsibility of the organization. The standard states that a parent home health agency provides direct support and administrative control of branches. The branch office is located sufficiently close to effectively share administration, supervision, and services in a manner that renders it unnecessary for the branch to separately meet the COPs as an HHA. We have added ''teeth'' to the current definition of the parent and branch by making it a standard level requirement. This will enable surveyors to cite a deficiency when the performance by an HHA's branch does not ensure that the branch is meeting the HHA requirements applicable to its operation. Since the parent/branch reference in the current rule is only a definition, surveyors cannot presently cite a deficiency.

We are proposing at § 484.105(e) to revise the current services furnished requirement at existing § 484.14(a). Specifically, we would retain the current requirement that part-time or intermittent skilled nursing services and at least one other therapeutic service (physical therapy, speech-language pathology, or occupational therapy; medical social services; or home health aide services) are made available on a visiting basis in a place of residence used as a patient's home. We would revise the second part of the standard to state that an HHA must provide at least one of the qualifying services directly, but may provide the second qualifying service and additional services under arrangements with another agency or organization. Medicare makes a distinction between services provided directly as opposed to under arrangement. As discussed above, the most common way services are provided directly is through the use of employees. The common law definition of ''employee'' fundamentally relates to whether a person is under control by the entity or individual providing the services, so by and large producing a W–2 form would constitute providing the services directly. We are exploring a straightforward way to define the provision of direct services as opposed to services provided under arrangement.

3. Clinical Records (Proposed section 484.110)

We are proposing a new COP, clinical records, that embodies several of the requirements in existing § 484.48, Condition of participation: Clinical records. In this condition we would retain only those process requirements that are essential to protect of patient health and safety.

The primary requirement under the proposed clinical records condition of participation is that a clinical record containing pertinent past and current findings is maintained for every patient who is accepted by the HHA for home health services. We propose to add the requirement that the information contained in the clinical record must be accurate, made available to the physician and appropriate HHA staff and may be maintained electronically. The accuracy of the clinical record must exhibit consistency between the diagnosed condition and the actual experience of the patient. Accuracy can be reflected in the appropriate link between patient assessment information and the services and treatments ordered and furnished in the plan of care. In light of the decentralized nature of HHAs, that is, patient care is not furnished in a single location, we believe that members of the interdisciplinary team must have access to patient information in order to provide quality services. Many HHAs maintain electronic records and we recognize this technological change in the home health environment.

The first standard of the condition, contents of the record, would include several elements that we currently require HHAs to include in the clinical record. We would retain the requirement that the record include clinical/progress notes, a discharge summary, and the plan of care. To give HHAs flexibility in maintaining clinical records, we would no longer specify that the record must include appropriate identifying information, name of physician, drug, dietary, treatment and activity orders, and copies of summary reports sent to the attending physician. Finally, we would add requirements to this standard that reflect our outcome oriented approach to patient care. Specifically at proposed § 484.110(a), we would require that the clinical record include: (1) The patient's current comprehensive assessment, clinical/progress notes, and plan of care; (2) responses to medications, treatments, and services; (3) a description of measurable outcomes that have been achieved; and (4) a discharge summary that is available to physicians upon request. We believe that these requirements would give HHAs flexibility in maintaining clinical records as well as ensure that the records contain information necessary to provide high quality patient care.

We propose to add a new standard at proposed § 484.110(b) to provide for authentication of clinical records. We would require that all entries be clear, complete, and appropriately authenticated. Authentication must include signatures or a computer secure entry by a unique identifier of a primary author who has reviewed and approved the entry. The move to computerized records has resulted in transcription of doctor's orders and electronic signatures. This standard is currently in the COPs for hospitals, and addresses technological changes in information management.

Under proposed § 484.110(c) we would retain the current requirement under § 484.48(a) (Standard: Retention of records). That is, we would continue to require that clinical records be retained for 5 years after the month the cost report to which the records apply is filed with the intermediary, unless State law stipulates a longer period of time. HHA policies provide for retention of records even if the HHA discontinues operations. If the patient is transferred to another health facility, a copy of the record or an abstract is sent with the patient.

We also propose to incorporate into this condition the first requirement under existing § 484.48(b) (Standard: Protection of records). At proposed § 484.110(d) we would provide that patient information and the record are safeguarded against loss or

unauthorized use. We believe the other requirements under existing § 484.48(b) concerning the release of clinical record information are best incorporated into the new standard at proposed § 484.50 (Patient Rights: Confidentiality of clinical records).

4. Personnel Qualifications (Proposed section 484.115)

Currently, provisions concerning the qualifications of HHA personnel are located at § 484.4. This section now includes very specific credentialing requirements and provides that any staff required to meet the conditions of participation must meet our qualifications. In keeping with our goal of eliminating process requirements that are not predictive of good outcomes for patients or necessary to prevent harmful outcomes for patients, we are proposing significant revisions to the personnel qualifications COP. Specifically, we would provide that in cases where personnel requirements are not statutory, or do not relate to a specific payment provision we would apply State certification or State licensure requirements. Under our proposal, the personnel qualifications would fall into three basic categories, personnel for which there is a statutory set of qualifications, personnel for which we have specified requirements since all States do not have licensure or certification requirements, and personnel for which all States have licensure or certification requirements. Under our proposed reorganization of part 484, the personnel qualifications would be located at proposed § 484.115. We discuss the personnel qualifications in detail below.

The first category of personnel qualifications are those in which we would defer to State law. At proposed § 484.115(a), we would specify that skilled professionals who provide services directly by or under arrangements with the HHA must be legally authorized (licensed or if applicable, certified or registered) to practice by the State in which he or she performs, and must act only within the scope of his or her State license or State certification.

The second category would consist of personnel for which there is a statutory set of qualifications. Section 1861(r) of the Act essentially defines a physician as a doctor of medicine, osteopathy, or podiatry legally authorized to practice medicine and/or surgery by the State in which such function or action is performed. We would refer to this definition at proposed § 484.115(b). The Act also contains a definition of a speech language pathologist. Specifically, section 1861(ll)(3)(A) defines a qualified speech language pathologist as an individual with a master's or doctoral degree in speech-language pathology who is licensed as a speech-language pathologist by the State in which the individual furnishes such services, or in the case of an individual who furnishes services in a State which does not license speech-language pathologists, has successfully completed 350 clock hours of supervised clinical practicum (or is in the process of accumulating such supervised clinical experience), performed not less than 9 months of supervised full-time speech-language pathology services after obtaining a master's or doctoral degree in speech-language pathology or a related field, and successfully completed a national examination in speech-language pathology approved by the Secretary. The Act also defines the qualifications for home health aides at section 1891(a). We believe that the description of qualifications for home health aides would be more appropriately located under the home health aide services COP. Thus, the requirement will be cross-referenced at proposed § 484.75(a).

The third category of personnel qualifications would include those persons for whom all States do not currently have a licensing or certification requirement. If a State has licensing or certification requirements for a professional included in this section, then the State qualifications would apply. If a State does not have licensing or certification requirements, then the HHA would apply the qualifications specified below. This category would consist of all current personnel qualifications found under § 484.4 with the exception of audiologists and practical (vocational) nurses. We propose to delete the current requirements for audiologists and practical (vocational) nurses. The existing requirement for practical (vocational) nurses is State licensure in the State practicing; thus it is self-explanatory in our deference to State law. We believe the audiologist requirement is no longer relevant to the home care environment.

We contemplated changing the current requirements for social workers consistent with our approach to deferring to State licensing laws, when applicable, but have not done so in this rule because of the absence of data and outcome measures. We are requesting comments on alternative approaches to personnel qualifications for social workers and the submission of data that would support the retention or change to the current personnel qualifications for social workers in this rule.

We propose to revise the existing personnel qualifications for HHA administrators. An administrator is a person who is licensed as a physician; or holds an undergraduate degree and is a registered nurse; or has education and experience in health service administration, with at least one year of supervisory or administrative experience in home health care or a related health care program and in financial management.

We propose to revise the definition of administrator to provide that an administrator who is a registered nurse must possess a bachelor's degree. Additionally, we would specify the type of education or experience that an administrator who is not a physician or a registered nurse must have. Specifically, as stated above, such a person would need education or experience in home health care or a related health care program and in monitoring the financial aspects of program management. In light of the fact that many HHAs experience financial difficulties as a result of poor or inefficient management, we believe that our proposed requirement that the administrator have education or experience in financial management would be beneficial. Additionally, we believe that this proposed requirement is necessary since inefficient financial management of an HHA can ultimately lead to low quality patient care. We note that States do not have licensing requirements for HHA administrators; thus, as in the past, HHAs would continue to apply our requirements.

In addition, in the event that a State does not have any licensure or certification for the following professions, the HHA would apply the qualifications specified below:

Occupational Therapist—A person who: (a) Is a graduate of an occupational therapy curriculum accredited jointly by the Committee on Allied Health Education and Accreditation of the American Medical Association and the American Occupational Therapy Association; or (b) is eligible for the National Registration Examination of the American Occupational Therapy Association; or (c) has 2 years of appropriate experience as an occupational therapist, and has achieved a satisfactory grade on a proficiency examination conducted, approved, or sponsored by the U.S. Public Health Service, except that such determinations of proficiency do not apply with respect to persons initially licensed by a State or seeking initial

qualification as an occupational therapist after December 31, 1977.

Occupational therapy assistant—A person who: (a) Meets the requirements for certification as an occupational therapy assistant established by the American Occupational Therapy Association; or (b) has 2 years appropriate experience as an occupational therapy assistant, and has achieved a satisfactory grade on a proficiency examination conducted, approved, or sponsored by the U.S. Public Health Service, except that such determinations of proficiency do not apply with respect to persons initially licensed by a State or seeking initial qualification as an occupational therapy assistant after December 31, 1977.

Physical therapist—A person who: (a) Has graduated from a physical therapy curriculum approved by: (1) The American Physical Therapy Association; or (2) The Committee on Allied Health Education and Accreditation of the American Medical Association; or (3) The Council on Medical Education of the American Medical Association and the American Physical Therapy Association; or (b) Prior to January 1, 1966 (1) Was admitted to membership by the American Physical Therapy Association, or (2) was admitted to registration by the American Registry of Physical Therapist, or (3) has graduated from a physical therapy curriculum in a 4-year college or university approved by a State department of education; or (c) has 2 years of appropriate experience as a physical therapist, and has achieved a satisfactory grade on a proficiency examination conducted, approved, or sponsored by the U.S. Public Health Service except that such determinations of proficiency do not apply with respect to persons initially licensed by a State or seeking qualifications as a physical therapist after December 31, 1977; or (d) was licensed or registered prior to January 1, 1966, and prior to January 1, 1970, had 15 years of full-time experience in the treatment of illness or injury through the practice of physical therapy in which the services were rendered under the order and direction of attending and referring doctors of medicine or osteopathy; or (e) if trained outside of the United States (1) Was graduated since 1928 from a physical therapy curriculum approved in the country in which the curriculum was located and in which there is a member organization of the World Confederation for Physical Therapy; (2) meets the requirements for membership in a member organization of the World Confederation for Physical Therapy.

Physical therapy assistant—A person who: (1) Has graduated from a 2-year college-level program approved by the American Physical Therapy Association; or (2) has 2 years of appropriate experience as a physical therapy assistant, and has achieved a satisfactory grade on a proficiency examination conducted, approved or sponsored by the U.S. Public Health Service, except that these determinations of proficiency do not apply to persons initially licensed by a State or seeking initial qualification as a physical therapy assistant after December 31, 1977.

Public health nurse—A registered nurse who has completed a baccalaureate degree program approved by the National League for Nursing for public health nursing preparation or postregistered nurse study that includes content approved by the National League for Nursing for public health nursing preparation.

Registered nurse—A licensed graduate of an approved school of professional nursing.

Social worker assistant—A person who: (1) Has a baccalaureate degree in social work, psychology, sociology, or other field related to social work, and has had at least 1 year of social work experience in a health care setting; or (2) has 2 years of appropriate experience as a social work assistant, and has achieved a satisfactory grade on a proficiency examination conducted, approved, or sponsored by the U.S. Public Health Service, except that these determinations of proficiency do not apply with respect to persons initially licensed by a State or seeking initial qualifications as a social work assistant after December 31, 1977.

Social worker—A person who has a master's degree from a school of social work accredited by the Council on Social Work Education, and has 1 year of social work experience in a health care setting.

Our approach to personnel credentialing would be as flexible as possible. Our objective is to rely upon State licensure to the extent that States license practitioners required under these conditions of participation. However, the diverse nature of State licensure provisions make it necessary for us to continue to write and apply requirements in some cases. For example, where a State does not license a type of practitioner required in these conditions of participation, a Federal definition is needed to enable HHAs and surveyors to define and meet the requirement. An example of this situation would be a State that does not license occupational therapists. There are also instances when the specific credential applicable to a practitioner is specified in the law. An example of this is a physician, which is defined in section 1861(r) of the Act. Finally, the credentialing philosophy that we have described here would not apply under Medicare Part B, when a specific level or education or training is specified as a pre-condition for reimbursement. Thus, the definitions contained in this section generally apply for HHA certification purposes only in States where there are no State licensure or certification requirements.

IV. Impact Statement

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless we certify that a proposed rule such as this would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all home health agencies are considered small entities. States and individuals are not considered small entities.

In addition, section 1102(b) of the Social Security Act requires us to prepare a regulatory impact analysis for any proposed rule that may have a significant impact on the operation of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds. We are not preparing a rural impact statement since we have determined, and certify, that this proposed rule would not have a significant impact on the operations of a substantial number of small rural hospitals.

Although the provisions proposed in this rule do not lend themselves to a quantitative impact estimate, we do not anticipate that they would have a substantial economic impact on home health agencies. However, to the extent that our proposals may have significant effects on providers or beneficiaries, be viewed as controversial, or be mandated by statute, we believe it is desirable to inform the public of our projections of the likely effects of the proposals.

As discussed in detail above, this proposed rule sets forth new HHA COPs that revise or eliminate many existing requirements and incorporate critical requirements into four ''core conditions.'' These four COPs—Patient Rights, Patient Assessment, Care Planning and Coordination of Services,

and Quality Assessment and Performance Improvement would focus both provider and surveyor efforts on the actual care delivered to the patient, the performance of the HHA as an organization, and the impact of the treatment furnished by the HHA on the health status of its patients. The impact of the proposed rule to incorporate OASIS into the HHA COPs is separately detailed in that proposed rule (which is set forth elsewhere in today's issue of the Federal Register). In developing these proposed COPs, we have retained structure and process-oriented requirements only where we believe they are essential to achieving desired patient outcomes or preventing harmful outcomes (for example, home health aide competency and supervision, timeliness of patient assessment).

Under the proposed Comprehensive Assessment COP, we are proposing specific timeframes for the initial assessment, completion of the assessment, and interim updates to the patient assessment. We believe that these requirements, though process-oriented, are predictive of good patient care and safety, as well as necessary to prevent harm to the patient. Our rationale for these timeframes is that by definition, a new patient being referred to a home health agency for initiation of services is at a point of immediate and serious need, especially as patients are returned home from hospital care sooner than ever before. Likewise, as the complexity of the care needs of patients increases, so does the need for comprehensive assessment of the patient. The importance of coming to closure and implementing an effective care plan becomes paramount.

We believe that these timeframe requirements pose little or no burden for the HHA since they would in all likelihood be performed in the absence of regulations. However, the proposed timeframes serve as a strong performance expectation for HHAs that may not have adequate resources (financial and human resources) by setting the outside acceptable time for these activities to occur. If too many patient referrals occur together, effective service delivery to some patients might be delayed by the HHA's inability to see the patient quickly or to conduct and complete the needed comprehensive assessment. Thus, if an HHA recognizes that its workload is such that it is not capable of beginning work with a patient virtually immediately upon referral, the patient should not be accepted for care.

We welcome comments to address whether the specific proposed timeframes in the regulation text are reasonable and consistent with current medical practice, and whether the timeframes should be used as benchmarks to reflect patient health and safety concerns involving the timeliness of the assessment components.

Provision of an assessment would be necessary to provide the appropriate information for compliance with the current plan of care requirements. The existing COPs contain several requirements that address the need for patient assessment, including most notably a long and detailed list of items under existing § 484.18(a) that are required to be covered in a plan of care, such as pertinent diagnoses, mental status, and functional limitations. In place of this requirement, we would emphasize the importance of the comprehensive assessment by establishing patient assessment as a separate COP, specifying the desired outcome of the assessment (that is, the identification of a patient's care needs), and then allowing HHAs the flexibility to determine how best to achieve this outcome. We believe that this approach is consistent with current accepted practices in HHAs and that most HHAs now perform a comprehensive assessment for most of their patients. We need to balance the possible short-term increase in costs or other administrative burden, if any, on the HHA with the long-term fundamental positive effect on patient health resulting from an organized and timely comprehensive assessment. As stated above, we are soliciting comments on the utility of specific timeframes for the comprehensive assessment.

We are proposing to require that HHAs ensure a majority of at least 50 percent of the total skilled professional services are provided directly. We are proposing to phase in this new approach over 3 years. In the first year, HHAs would be required to ensure that at least 30 percent of the skilled professional services are provided directly. In the second year, HHAs would be required to ensure that at least 40 percent of the skilled professional services are provided directly. By the third year of enactment, HHAs would be required to ensure that at least 50 percent of the skilled professional services are provided directly.

Currently, an HHA must provide at least one of the qualifying services directly, but may provide the second qualifying service and additional services under arrangements with another agency or organization. We believe that the excessive use of contracting could be an indication that an HHA may be exceeding its patient capacity, leading to possible instability that can result in disruptions to patient care. Excessive contracting is also a potential indication that the HHA may not be exercising full control over the provision of quality care. Participants in a series of home health initiative meetings agreed that this process requirement is a strong predictor of appropriate management and in proposing this approach we are relying on the judgement of the industry. This is a performance safeguard that seeks to ensure continuity and quality of care through the restriction of contracted care in the home care environment.

It is important to note that HHAs currently report employment data on their cost reports (freestanding HHAs: Form-HCFA–1728–S–3 and hospital-based HHAs: Form-HCFA–2552–H–S–4). We invite comment on this shift in our approach and on any concerns HHAs may have regarding their ability, both operationally and financially, to undertake this new approach. We also invite comment on any other creative approaches that could be used to limit the use of contracted care in the home care industry.

We are proposing that HHAs conduct criminal background checks of home health aides as a condition of employment to safeguard beneficiaries from abusive practices in their home. This proposed requirement may have some impact though not significant, on HHAs, which are considered small entities. We already have similar patient protection requirements in other rules governing other Medicare-participating providers. These protections are especially necessary in the decentralized environment of home health delivery. We are soliciting comments on the impact on the HHA to operationally comply with this requirement.

We are proposing a new standard to address the parent/branch relationship to ensure a consistent level of care throughout the HHA as an organizational entity. We added strength to the current definitions by raising them to standard level requirements. This will enable surveyors to cite a deficiency when the performance by an HHA's branch does not ensure that the branch is meeting the HHA requirements applicable to its operation. HCFA has concern about branches that are not required to independently meet the conditions of participation, but act as an independent HHA and the affect of that situation on the consistency and quality of care provided. We estimate that this standard will not disrupt current business practice because the current definitions of parent and branch office provide a performance

expectation for the HHA as an organizational entity as a condition of participation for Medicare certification. The current definitions provide a clear expectation that the parent office develops and maintains administrative controls of branches; and the branch office is location or site from which a home health agency provides services within a portion of the total geographic area served by the parent agency and is part of the HHA and is located sufficiently close to share administration, supervision and services in a manner that renders it unnecessary for the branch to independently meet these conditions of participation as a home health agency.

More often though, we have eliminated structural or process-oriented requirements that we no longer believe are necessary (such as personnel policies or the prescriptive details concerning the duties of a registered nurse versus those of a licensed practical nurse), in favor of an approach that, through the proposed core COP on quality assessment and performance improvement, invests HHAs with internal responsibility for improving their performance. This approach is intended to incorporate into our regulations current best practices in well-managed HHAs, relying on the HHA to identify and resolve its performance problems in the most effective and efficient manner possible.

We believe that the proposed COPs would decrease the administrative burden on HHAs to comply with detailed Federal requirements, thus reducing the costs incurred by the typical HHA in meeting the Medicare conditions of participation. (See the information collection section below for examples of specific changes in the recordkeeping and paperwork burden of HHAs that would be associated with this proposed rule.) Instead, the proposed COPs would provide HHAs with much more flexibility to determine how best to pursue our shared quality of care objectives in the most cost-effective manner. We expect HHAs to develop different approaches to compliance based on their varying resources and patient populations, differences in laws in various localities (such as those concerning personnel standards), and other factors. Given the uncertainties over the behavior of individual HHAs under the proposed new COPs, quantitative analysis of the effects of these proposed changes is not possible. However, even in situations where the proposed requirements could result in some immediate costs to an individual HHA (for example, for an HHA that would need to upgrade its existing performance evaluation program), we believe that the changes that the HHA would make would produce real but difficult to estimate long-term economic benefits (such as more cost-effective performance practices or higher patient satisfaction that could lead to increased business for the HHA.)

We believe that the proposed COPs would decrease the regulatory burden on HHAs and provide them with greatly enhanced flexibility. At the same time, the proposed requirement for a program of continuous quality assessment and performance improvement would increase performance expectations for HHAs in terms of achieving needed and desired outcomes for patients and increasing patient satisfaction with services provided. This patient-centered, outcome oriented change in approach to the regulation will also likely fundamentally change our approach to the survey process. For example, since the proposed regulation sets performance expectations for the HHA to constantly improve, it may be possible to alter significantly, or possibly eliminate altogether the current Functional Assessment Instrument (FAI), which surveyors use to assess the outcomes of care through home visits and some record review. In an expanded review of the agency's approach to quality assessment and performance improvement, we may approach this task differently, with greater flexibility than the current FAI affords. We invite comment on this fundamental shift in our regulatory approach and on any concerns HHAs may have regarding their ability, both operationally and financially, to undertake this new approach. We are especially interested in comments that address how HCFA could improve this approach, what additional flexibility could be provided, what (if any) process requirements that are critical to patient care and safety should be added, and how well HCFA's investment in the HHA's participation in a strong continuous quality assessment and performance improvement program of their own design will achieve our stated and intended goal of improving the efficiency, effectiveness and quality of patient outcomes and satisfaction. We are especially interested in comments that address how HCFA could improve this approach, what additional flexibility could be provided, what (if any) process requirements that are critical to patient care and safety should be added, and how well HCFA's investment in the HHA's participation in a strong continuous quality assessment and performance improvement program of its own design will achieve our stated and intended goal of improving the efficiency, effectiveness, and quality of patient outcomes and satisfaction.

For the reasons given above, we certify that the proposed rule will not have a significant effect on a substantial number of small entities and that a regulatory flexibility analysis is not needed.

In accordance with the provisions of Executive Order 12866, this proposed rule was reviewed by the Office of Management and Budget.

V. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, agencies are required to provide 60-day notice in the Federal Register and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- Whether the information collection is necessary and useful to carry out the proper functions of the agency;
- The accuracy of the agency's estimate of the information collection burden;
- The quality, utility, and clarity of the information to be collected; and
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Therefore, we are soliciting comment on each of these issues for the proposed information collection requirements discussed below.

The title and description of the individual information collection requirements are shown below with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

As indicated earlier in this preamble, the current regulations dealing with the HHA conditions of participation are contained in part 484 of the Code of Federal Regulations. The information collection requirements for this part are currently approved under OMB approval number 0983–0365 with an expiration date of May 31, 1998. Since we are proposing to revise or delete many of the information collection

requirements in the existing HHA conditions of participation, we will be seeking OMB approval for all of the information collection requirements contained in the proposed part 484, including those that are currently approved under OMB approval number 0983–0365. Many of these requirements are performed only once by each HHA (such as the development of a standard patient's right disclosure) or would normally be performed by an HHA in the normal course of responsible business practices in the absence of these requirements (such as the maintenance of patient's records) and therefore represent a minimal, if any, burden on HHAs. Following is a list of the specific information collection requirements contained in the proposed 42 CFR Part 484.

Section 484.50 Patient's Rights

This section dealing with patient's rights mirrors those information collection requirements in section 4021 of OBRA '87, which specify the rights of patients receiving services from Medicare certified HHAs. These requirements are necessary to ensure compliance with statutory responsibilities at section 1891 of the Act. Current requirements at § 484.10 that are retained in the proposed rule include:

a. A HHA must provide the patient with a written notice of the patient's rights in advance of providing care and document that it has complied with this requirement.

b. The HHA must document the existence and resolution of complaints about care furnished by the HHA that were made by the patient, the patient's family or guardian.

c. The HHA must advise the patient in advance of the disciplines that will furnish the care, the plan of care, expected outcomes, barriers to treatment, and any changes in the care to be furnished.

d. The HHA must advise the patient of the HHA's policies and procedures regarding disclosure of patient records.

e. The HHA must advise the patient of his/her liability for payment.

f. The HHA must advise the patient of the number, purpose, and hours of operation of the State home health hotline.

Burden Estimate

We foresee that the HHAs will develop a standard notice of rights that will fulfill the requirements contained in this section. The standard notice will contain a checklist to be completed by the HHA in a manner appropriate to each patient being accepted. A carbon copy of the signed notice will serve as documentation of compliance. We estimate that the completion of this form will impose a burden of approximately 3 seconds per each current HHA patient for 1 year (3 seconds × 3.4 million patients) = 2,833 hours and each new admission in succeeding years (3 seconds × 800,000 (approximate admission in 1995) = 666 hours.

In the rare circumstances to which paragraph (b) applies, it is already common practice to have this information retained in the HHA's record. Therefore, this requirement imposes no burden.

Section 484.55 Comprehensive Assessment

This new section on comprehensive assessment of the patient would require HHAs to provide each patient with a comprehensive assessment (including drug regimen review) of his or her needs which would be used to develop expectations for treatment. We are proposing specific timeframes for the initial assessment visit and completion of the assessment of the patient because we believe that these requirements are predictive of good patient care and safety and as well as the prevention of harm to the patient. As many HHAs are already performing a standardized patient assessment within their own internal policies, we believe that these timeframes pose little or no burden since they would in all likelihood be performed in the absence of regulations. In addition, since HHAs already routinely obtain assessment information from patients upon initiation of care and on an ongoing basis during treatment, we believe this new requirement would not place an information collection or paperwork burden on HHAs. The proposed assessment timeframes serve as a strong performance expectation for HHAs.

It is important to note that this proposed rule does not include the requirement that HHAs participate in an external quality improvement process incorporating the core standard assessment data set. As discussed above, HCFA is proposing to require use of a core standard assessment data set, as discussed elsewhere in today's issue of the Federal Register. Reporting requirements associated with that proposal are discussed separately in that Federal Register notice.

Section 484.60 Care Planning and Coordination of Services

This new section reflects an interdisciplinary, coordinated approach to home health care delivery. The proposed new care planning and coordination of services section sets forth the requirement that each patient's written plan of care specifies the care and services necessary to meet the patient specific needs identified in the comprehensive assessment and the measurable outcomes that the HHA anticipates will occur as a result of implementing and coordinating the plan of care. This new section incorporates several of the existing requirements under current § 484.18. Section 484.18 consists of longstanding requirements which implement statutory provisions found in sections 1835 and 1814 of the Act, as well as section 1891(a) as amended by OBRA '87 for non-Medicare patients. In addition, HCFA Forms 485–488 are currently approved under OMB No. 0938–0357.

Burden Estimate

We believe that these requirements are commonly accepted as good medical practice. Therefore, they would impose little or no burden on HHAs as they would in all likelihood be performed even in the absence of these regulations. The only anticipated burden associated with this requirement concerns the possible establishment and periodic review of plans of care by doctors of osteopathy or podiatry. We estimate that this will affect approximately 3 percent of home health patients, resulting in a burden of 24,000 × 5 minutes = 2,000 hours for new admissions and 102,000 × 3 minutes = 5,100 hours for existing patients.

Section 484.65 Quality Assessment and Performance Improvement

This new section requires the HHA to develop, implement, maintain and evaluate an effective, data driven quality assessment and performance improvement program. Current requirements for HHAs do not provide for the operation of an internal quality assessment and performance improvement program, whereby the HHA examines its methods and practices of providing care, identifies the opportunities to improve its performance and then takes actions that result in higher quality of care for HHA patients. We have not prescribed the structures and methods for implementing this requirement and have focused the condition toward the expected results of the program. This provides flexibility to the HHA, as it is free to develop a creative program that meets the HHA's needs and reflects the scope of its services. This new provision would replace the current conditions at § 484.16 Group of professional

personnel and § 484.52 Evaluation of an agency's program.

Burden Estimate

We believe the writing of internal policies governing the HHA's approach to the development, implementation, maintenance, and evaluation of the quality assessment and performance improvement program will impose a burden. We want HHAs to utilize maximum flexibility in their approach to quality assessment and performance improvement programs. Flexibility is provided to HHAs to ensure that each program reflects the scope of its services. We believe that this requirement provides a performance expectation that HHAs will set their own goals and use the information to continuously strive to improve their performance over time. Given the variability across HHAs and the flexibility provided, we believe that the burden associated with writing the internal policies governing the approach to the development, implementation, and evaluation of the quality assessment and performance improvement program will reflect that diversity. Given the variability, it is difficult to predict an exact burden. We want to provide flexibility and do not want to be prescriptive in defining hourly parameters. However, we need to quantify the burden associated with this requirement. We estimate that the burden associated with writing the internal policies would be an average of 4 hours annually (although this figure may be much lower, since many HHAs have existing internal quality improvement programs). We estimate on average:

4 hours × 9,058 (total number of Medicare-certified HHAs in calendar year 1995) = 36,232 hours

4 hours × 1,145 (total number of newly certified HHAs in calendar year 1995) = 4,580 hours

Section 484.70 Skilled Professional Services

This new section would require skilled professionals who provide services to HHA patients as employees or under arrangement to participate in all aspects of care, including an ongoing interdisciplinary evaluation and development of the plan of care and be actively involved in the HHA's quality assessment and performance improvement program. In place of current provisions governing skilled nursing services § 484.30, therapy services § 484.32, and medical social services § 484.34 we would consolidate all new requirements under one new condition, Skilled professional services. We are broadly describing the expectations of skilled professionals who participate in the interdisciplinary approach to home health care delivery. The current requirements are commonly accepted as good medical practice and therefore impose little or no burden on the HHAs as they would in all likelihood be performed in the absence of Federal regulations.

We are proposing a new standard that the HHA must ensure that a majority of at least 50 percent of total skilled professional services are routinely provided directly. We are proposing to phase in this new approach over three years. In the first year, HHAs would be required to ensure at least 30 percent of the total skilled professional services are provided directly. In the second year, HHAs would be required to ensure at least 40 percent of the total skilled professional services are provided directly. In the third year, we would require at least 50 percent of the total skilled professional services are provided directly. The requirement that the HHAs determine compliance with this standard imposes a one-time annual burden of 2 minutes on existing HHAs and any newly certified HHAs to determine the total number of skilled professional visits that are provided directly. HHAs currently report employment data (full-time equivalents) on their cost reports (freestanding HHAs: Form HCFA–1728–S–3 currently approved under OMB number 0938–0022 and hospital based HHAs: Form HCFA–2552–H–S–4 currently approved under OMB number 0938–0050).

Burden Estimate

2 minutes × 9,058 existing HHAs = 302 hours

2 minutes × 1,145 newly certified HHAs = 39 hours

Section 484.75 Home Health Aide Services

This section governs the requirements for home health aide services. Many requirements in this section directly mirror the statutory requirements of section 4021 of OBRA '87. The requirements are longstanding and implement sections 1891 and 1861 of the Act: (1) The HHA must maintain sufficient documentation to demonstrate that training requirements are met; (2) The HHA's competency evaluation must address all required subjects; (3) The HHA must maintain documentation that demonstrates that requirements of competency evaluation are met; and (4) A registered nurse or appropriate skilled professional prepares written instructions for care to be provided by the home health aide.

In addition, this section requires the HHA to conduct criminal background checks of home health aides as a condition of employment.

Burden Estimate

The first requirement imposes no additional burden as this documentation will be included in personnel records. The second requirement will impose a one time burden (to develop competency evaluation) on all existing agencies and any newly certified agencies in the future. We estimate that it will require approximately 2 hours for each HHA to formulate this evaluation (although this figure may be much lower in practice if agencies chose to adopt standardized evaluation forms).

2 hours × 9,058 existing HHAs = 18,116 hours annually

2 hours × 1,145 newly certified HHAs each year = 2,290 hours annually

Maintaining documentation that demonstrates that each aide has met the evaluation requirements imposes no burden as this information will be retained in personnel records. The third requirement imposes a burden of approximately 3 minutes for each newly admitted patient that receives aide care, or 3 minutes × 260,000 (estimated number of patients receiving aide care) = 13,000 hours.

We are not able at this time to estimate the burden associated with the requirement that the HHA conduct criminal background checks of home health aides. We solicit comments on whether HHAs believe this requirement will impose an additional burden on them and what that burden would be.

Section 484.100 Compliance With Federal, State, and Local Laws

Under this section, the HHA must disclose to the State Survey Agency at the time of the HHA's initial request for certification the name and address of all persons with an ownership or control interest in the HHA, the name and address of all officers, directors, agents, and managers of the HHA, as well as the name and address of the corporation or association responsible for the management of the HHA and the chief executive and chairman of that corporation or association. This requirement directly implements section 4021 of OBRA '87.

Burden Estimate

This provision expands upon a similar requirement currently contained in § 405.1221(b). It imposes a minimal burden of adding the necessary additional information to the current disclosure used by existing HHAs and

the creation of a new disclosure of ownership for newly certified HHAs. The burden for supplementing the existing disclosure with the required additional information is estimated at—

5 minutes × 9,058 (total number of Medicare certified HHAs in 1995) = 755 hours

5 minutes × 1,145 (number of newly certified HHAs in 1995) = 95 hours

Section 484.105 Organization and Administration of Services

The revised organization and administration of services condition simplifies the structure of the current requirements and provides flexibility to the HHA by replacing the current focus on organizational structures with new performance expectations for the administration of the HHA as an organizational entity. In the proposed condition we revise the current standard on governing body § 484.14(b), retain with only minor editorial changes the current standard on services furnished § 484.12(a), retain with only minor editorial changes, the requirements with respect to services furnished under arrangements under existing § 484.14(h), delete the current standards on the administrator § 484.14(c), delete the current standards on supervising physician or registered nurse § 484.14(d), delete the current standards on personnel policies § 484.14(e), delete the current standards on institutional planning § 484.14(i), relocate current condition § 484.38 under this condition and relocate the current standard on laboratory services under the compliance with Federal, State and local laws condition.

The current institutional planning requirements under § 484.14(i) impose 5,474.5 hours of burden under the current HHA conditions of participation. We are proposing to delete that requirement from the HHA conditions of participation, therefore, reducing current burden associated with the institutional planning requirements.

Section 484.110 Clinical Records

A clinical record containing pertinent past and current findings is maintained for every patient receiving home health services. Clinical records are retained for 5 years after the month the cost report to which the records is filed with the intermediary. Written procedures govern the use and removal of records and conditions for release of information. This section contains longstanding provisions which are specifically required in section 1861(o) of the Act and are necessary to the preservation of the patient's privacy and the quality of care. There is no burden associated with the retention of patient records as this merely entails the filing of a copy of the record.

Total Burden Estimate

The total annual hourly burden for the information collection requirements under the revisions proposed to the HHA conditions of participation is estimated to be 86,008 hours. We estimate the annual hourly burden under the revised COPs to be 8.4 hours per Medicare-certified HHA (86,008 total hours/10,203 (total number of Medicare-certified HHAs and newly certified HHAs in calendar year 1995). The total annual hourly burden for the information collection requirements under OMB approval number 0938–0365 (current HHA conditions of participation) was estimated to be 7.7 hours per Medicare-certified HHA (69,499 total hours/9,009 (total number of Medicare-certified HHAs and newly certified HHAs as of November 1994).

Again, we welcome comments on all aspects of the above material. Written comments on these information collection and recordkeeping requirements should be mailed directly to the following:

Health Care Financing Administration, Office of Financial and Human Resources, Management Planning and Analysis Staff, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850; and Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building Washington, DC 20503, Attention: Allison Herron Eydt, HCFA Desk Officer.

Any comments submitted on these collection of information requirements must be received by these two offices on or before May 9, 1997, to enable OMB to act promptly on HCFA's information collection approval request.

VI. Crosswalk Current COPs/Revised COPs

Current COPs	Revised COPs
Patient Rights 484.10:	
484.10(a)	Intact 484.50(a).
484.10(b)	Revised 484.50(b).
484.10(c)	Revised 484.50(c).
484.10(d)	Revised 484.50(d).
484.10(e)	Intact 484.50(e).
484.10(f)	Intact 484.50(f).
Compliance with Federal, State and local laws, disclosure of ownership information 484.12:	
484.12(a)	Intact with minor revisions 484.100(a).
484.12(b)	Intact 484.100(b).
484.12(c)	Incorporated into QAPI 484.65.
Organization, Services and Administration 484.14:	
484.14(a)	Revised 484.105(e).
484.14(b)	Revised 484.105(a).
484.14(c)	Revised 484.105(a).
484.14(d)	Deleted.
484.14(e)	Incorporated into QAPI 484.65.
484.14(f)	Deleted.
484.14(g)	Revised 484.60(d).
484.14(h)	Revised 484.105(d).
484.14(i)	Deleted.
484.14(j)	Intact 484.100(d).
Group of Professional Personnel 484.16	Deleted—QAPI approach 484.65.
Acceptance of patients, plan of care and medical supervision 484.18:	
484.18(a)	Revised 484.60(a).
484.18(b)	Revised 484.60(b).
484.18(c)	Revised 484.60(c) and 484.55(a).

Current COPs	Revised COPs
Skilled Nursing Services 484.30	Deleted—combined aspects 484.70.
Therapy Services 484.32	Deleted—combined aspects 484.70.
Medical Social Services 484.34	Deleted—combined aspects 484.70.
Home Health Aide Services 484.36:	
484.36(a)	Intact 484.75(b).
484.36(a)(1)(i)	Revised 484.75(b)(1)(i).
484.36(a)(1) (ii)–(xii)	Intact 484.75(b)(1) (ii)–(xii).
484.36(a)(1)(xiii)	Revised 484.75(b)(1)(xiii).
484.36(a)(2)(i)	Intact 484.75(b)(2).
484.36(a)(2)(ii)	Revised 484.75(b)(3).
484.36(a)(3)	Revised 484.75(b)(4).
484.36(b)(1)	Revised 484.75(c)(1).
484.36(b)(2)(i)	Intact 484.75(c)(2).
484.36(b)(2)(ii)	Deleted.
484.36(b)(2)(iii)	Revised 484.75(d)(1).
484.36(b)(3)(i)	Revised 484.75 (c)(3) and (d)(2).
484.36(b)(3)(ii)	Revised 484.75(c)(4).
484.36(b)(3)(iii)	Revised 484.75(c)(2).
484.36(b)(4)(i)	Intact 484.75(c)(5).
484.36(b)(4)(ii)	Deleted.
484.36(b)(5)	Intact 484.75(c)(6).
484.36(b)(6)	Deleted.
484.36(c)	Revised 484.75(e).
484.36(d)	Revised 484.75(f).
484.36(e)	Intact 484.75(g).
Qualifying to furnish outpatient PT or Speech language pathology 484.38.	Intact 484.105(f).
Clinical Records 484.48	Revised 484.110.
Evaluation of Agency's Program 484.52	Deleted QAPI approach 484.65.
Definitions 484.2	Revised 484.2.
Personnel Qualifications 484.4	Revised Approach 484.115.

VII. Response to Comments

Because of the large number of items of correspondence we normally receive on Federal Register documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

HCFA proposes to amend 42 CFR chapter IV as follows:

PART 484—CONDITIONS OF PARTICIPATION: HOME HEALTH AGENCIES

1. The authority citation for part 484 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395(hh)).

2. Part 484 is revised to read as follows:

PART 484—CONDITIONS OF PARTICIPATION: HOME HEALTH AGENCIES

Subpart A—General Provisions

Sec.
484.1 Basis and scope.
484.2 Definitions.

Subpart B—Patient Care

484.50 Condition of participation: Patient rights.
484.55 Condition of participation: Comprehensive assessment of patients.
484.60 Condition of participation: Care planning and coordination of services.
484.65 Condition of participation: Quality assessment and performance improvement.
484.70 Condition of participation: Skilled professional services.
484.75 Condition of participation: Home health aide services.

Subpart C—Organizational Environment

484.100 Condition of participation: Compliance with Federal, State, and local laws.
484.105 Condition of participation: Organization and administration of services.
484.110 Condition of participation: Clinical records.
484.115 Condition of participation: Personnel qualifications for skilled professionals.

Subpart A—General Provisions

§ 484.1 Basis and scope.

(a) *Basis.* This part is based on sections 1861(o) and 1891 of the Act, which establish the conditions that an HHA must meet in order to participate in Medicare, and specify that the Secretary may impose additional requirements that are considered necessary to ensure the health and safety of patients.

(b) *Scope.* The provisions of this part serve as the basis for survey activities for the purpose of determining whether an agency meets the requirements for participation in Medicare.

§ 484.2 Definitions.

As used in this part—

Branch office means a location or site from which a home health agency provides services within a portion of the total geographic area served by the parent agency. The branch office is part of the home health agency and is located sufficiently close to share administration, supervision, and services in a manner that renders it unnecessary for the branch independently to meet the conditions of participation as a home health agency.

Parent home health agency means the agency that develops and maintains administrative control of branches.

Quality indicator means a specific, valid, and reliable measure of access, care outcomes, or satisfaction, or a measure of a process of care that has been empirically shown to be predictive of access, care outcomes, or satisfaction.

Subpart B—Patient Care

§ 484.50 Condition of participation: Patient rights.

The patient has the right to be informed of his or her rights. The HHA must protect and promote the exercise of these rights.

(a) *Standard: Notice of rights.*

(1) The HHA must provide the patient with a written notice of the patient's rights in advance of furnishing care to the patient or during the initial evaluation visit before the initiation of treatment.

(2) The HHA must maintain documentation showing that it has complied with the requirements of this section.

(b) *Standard: Exercise of rights and respect for property and person.*

(1) The patient has the right to exercise his or her rights as a patient of the HHA.

(2) The patient's family or guardian may exercise the patient's rights when the patient has been judged incompetent.

(3) The patient has the right to have his or her property treated with respect.

(4) The patient has the right to voice grievances regarding treatment or care that is (or fails to be) furnished, or regarding the lack of respect for property by anyone who is furnishing services on behalf of the HHA and must not be subjected to discrimination or reprisal for doing so.

(5) The HHA must investigate complaints made by a patient or the patient's family or guardian regarding treatment or care that is (or fails to be) furnished, or regarding the lack of respect for the patient or the patient's property by anyone furnishing services on behalf of the HHA, and must document both the existence of the complaint and the resolution of the complaint.

(c) *Standard: Right to be informed and to participate in planning care and treatment.*

(1) The patient has the right to be informed, in advance, about the care to be furnished, the plan of care, expected outcomes, barriers to treatment, and of any changes in the care to be furnished.

(i) The HHA must advise the patient in advance of the disciplines that will furnish care, and the frequency of visits proposed to be furnished.

(ii) The HHA must advise the patient in advance of any change in the plan of care before the change is made.

(2) The patient has the right to participate in the planning of the care.

(i) The HHA must advise the patient in advance of the right to participate in planning the care or treatment and in planning changes in the care or treatment.

(ii) The HHA must comply with the requirements of subpart I of part 489 of this chapter relating to maintaining written policies and procedures regarding advance directives. The HHA must inform and distribute written information to the patient, in advance, concerning its policies on advance directives, including a description of applicable State law.

(d) *Standard: Confidentiality of medical clinical records.* The patient has the right to confidentiality of the clinical records maintained by the HHA. The HHA must advise the patient of the agency's policies and procedures regarding disclosure of clinical records.

(e) *Standard: Patient liability for payment.*

(1) The patient has the right to be advised, before care is initiated, of the extent to which payment for the HHA services may be expected from Medicare or other sources, and the extent to which payment may be required from the patient. Before the plan of care is initiated, the HHA must inform the patient orally and in writing of:

(i) The extent to which payment may be expected from Medicare, Medicaid, or any other Federally funded or aided program known to the HHA;

(ii) The charges for services that will not be covered by Medicare; and

(iii) The charges that the individual may have to pay.

(2) The patient has the right to be advised orally and in writing of any changes in the information provided in accordance with paragraph (e)(1) of this section when they occur. The HHA must advise the patient of these changes orally and in writing as soon as possible, but no later than 30 calendar days from the date that the HHA becomes aware of a change.

(f) *Standard: Home health hotline.* The patient has the right to be advised of the availability of the toll-free home health hotline in the State. When the agency accepts the patient for treatment or care, the HHA must advise the patient in writing of the telephone number of the home health hotline established by the State, the hours of its operation, and that the purpose of the hotline is to receive complaints or questions about local HHAs.

§ 484.55 Condition of participation: Comprehensive assessment of patients.

Each patient must receive, and an HHA must provide, a patient-specific, comprehensive assessment that identifies the patient's need for home care and that meets the patient's medical, nursing, rehabilitative, social, and discharge planning needs.

(a) *Standard: Drug regimen review.* The comprehensive assessment must include a review of the patient's drug regimen in order to identify any potential adverse effects and drug reactions, including ineffective drug therapy, significant side effects, significant drug interactions, duplicate drug therapy, and noncompliance with drug therapy.

(b) *Standard: Initial assessment visit.*

(1) Based on physician's orders, a registered nurse must perform an initial assessment visit to determine the immediate care and support needs of the patient. The initial assessment visit must be held either within 48 hours of referral, or within 48 hours of the patient's return home, or within 48 hours of the physician-ordered start of care date, if that is later.

(2) When rehabilitation therapy service (speech language pathology services, physical therapy, or occupational therapy) is the only service ordered by the physician, the initial assessment visit may be made by the appropriate rehabilitation skilled professional.

(c) *Standard: Timeframe for completion of the comprehensive assessment.* The HHA must complete the comprehensive assessment in a timely manner consistent with the patient's immediate needs, but no later than 5 working days after the start of care.

(d) *Standard: Update of comprehensive assessment.* The comprehensive assessment must include information on the patient's progress toward clinical outcomes, and must be updated and revised—

(1) As frequently as the condition of the patient requires, but not less frequently than every 62 days beginning with the start of care date;

(2) When the plan of care is revised for physician review; and

(3) At discharge.

§ 484.60 Condition of participation: Care planning and coordination of services.

Each patient must have a written plan of care that must specify the care and services necessary to meet the patient-specific needs identified by the physician or in the comprehensive assessment, or both, and the measurable outcomes that the HHA anticipates will occur as a result of implementing and coordinating the plan of care. Patients are accepted for treatment on the basis of a reasonable expectation that the patient's medical, nursing, and social needs can be met adequately by the

agency in the patient's place of residence.

(a) *Standard: Plan of care.* All home health services furnished to patients must follow a written plan of care established and periodically reviewed by a doctor of medicine, osteopathy, or podiatric in accordance with § 409.42 of this chapter. All patient care orders must be included in the plan of care.

(b) *Standards: Review and revision of the plan of care.*

(1) The plan of care must be reviewed and revised by the physician and the HHA as frequently as the patient's condition requires, but no less frequently than once every 62 days, beginning with the date of start of care. The HHA must promptly alert the physician to any changes in the patient's condition that suggest a need to alter the plan of care or that suggest that measurable outcomes are not being achieved.

(2) A revised plan of care must include current information from the patient's comprehensive assessment and information concerning the patient's progress toward outcomes specified in the plan of care.

(c) *Standard: Conformance with physician orders.*

(1) Services and treatments must be administered by agency staff only as ordered by the physician.

(2) Oral orders must be accepted only by personnel authorized to do so by applicable State and Federal laws and regulations as well as by the HHA's internal policies.

(3) When services are provided on the basis of a physician's oral orders, a registered nurse or qualified therapist responsible for furnishing or supervising the ordered services must put the orders in writing and sign and date the orders with the date of receipt. Oral orders must also be countersigned and dated by the physician.

(d) *Standard: Coordination of care.*

(l) The HHA must maintain a system of communication and integration of services, whether provided directly or under arrangement, that ensures the identification of patient needs and barriers to care, the ongoing liaison of all disciplines providing care, and the contact of the physician for relevant medical issues.

(2) The HHA identifies the level of coordination necessary to deliver care to the patient and involves the patient and care giver in coordination of care efforts.

§ 484.65 Condition of participation: Quality assessment and performance improvement.

The HHA must develop, implement, maintain, and evaluate an effective, data-driven quality assessment and performance improvement program. The program must reflect the complexity of the HHA's organization and services (including those services provided directly or under arrangement). The HHA must take actions that result in improvements in the HHA's performance across the spectrum of care.

(a) *Standard: Components of quality assessment and performance improvement program.* The HHA's quality assessment and performance improvement program must include, but not be limited to, the use of objective measures to demonstrate improved performance with regard to:

(1) Quality indicator data (derived from patient assessments) to determine if individual and aggregate measurable outcomes are achieved compared to a specified previous time period.

(2) Current clinical practice guidelines and professional practice standards applicable to home care.

(3) Utilization data, as appropriate (for example, numbers of staff, types of visits, hours of services, etc.).

(4) Patient satisfaction measures.

(5) Effectiveness and safety of services (including complex high technology services, if provided), including competency of clinical staff, promptness of service delivery, and whether patients are achieving treatment goals and measurable outcomes.

(b) *Standard: Monitoring performance improvement.* The HHA must take actions that result in performance improvements and must track performance to assure that improvements are sustained over time.

(c) *Standard: Prioritizing improvement activities.* The HHA must set priorities for performance improvement, considering prevalence and severity of identified problems and giving priority to improvement activities that affect clinical outcomes. The HHA must immediately correct any identified problems that directly or potentially threaten the health and safety of patients.

(d) *Standard: External quality assessment and performance improvement program.* The HHA must meet periodic external quality assessment and performance improvement reporting requirements as specified by HCFA.

(e) *Standard: Infection control.* The HHA must maintain an effective infection control program in accordance with the policies and procedures of the HHA and Federal and State requirements.

§ 484.70 Condition of participation: Skilled professional services.

Skilled professionals who provide services to HHA patients directly or under arrangement must participate in all aspects of care, including an ongoing multidisciplinary evaluation and development of the plan of care, and be actively involved in the HHA's quality assessment and performance improvement program. For purposes of this section, skilled professional services include skilled nursing services, physical therapy, speech language pathology services, and occupational therapy as specified in § 409.44, and medical social worker and home health aide services as specified in § 409.45.

(a) *Standard: Services of skilled professionals.* Skilled professional services are authorized, delivered, and supervised (that is, given authoritative procedural guidance) only by health care professionals who meet the appropriate qualifications specified under § 484.115 and who practice under the HHA's policies and procedures.

(b) *Standard: Provision of services.* The HHA must ensure that a majority, at least 50 percent, of total skilled professional services are routinely provided directly by the HHA. An HHA may provide other skilled professional visits under arrangement as needed.

§ 484.75 Condition of participation: Home health aide services.

All home health aide services must be provided by individuals who meet the personnel requirements specified in paragraph (a) of this section.

(a) *Standard: Home health aide qualifications.* A qualified home health aide is a person who—

(1) Has successfully completed a State-established or other training program that meets the requirements of paragraph (b) of this section and a competency evaluation program or State licensure program that meets the requirements of paragraph (c) of this section, or a competency evaluation program or State licensure program that meets the requirements of paragraph (c) of this section; or has completed a nurse aide training or competency evaluation program approved by the State as meeting the requirements of §§ 483.151 through 483.154 of this chapter and is currently listed in good standing on the State nurse aide registry;

(2) Under paragraph (a)(1) of this section, an individual is not considered to have completed a training and competency evaluation program, or a competency evaluation program if, since the individual's most recent completion of this program(s), there has been a

continuous period of 24 consecutive months during none of which the individual furnished services described in § 409.40 of this chapter for compensation. If a 24-month lapse in furnishing services has occurred, the individual must complete another training and competency evaluation program or a competency evaluation program, as specified in paragraph (a)(1) of this section, before providing services.

(b) *Standard: Home health aide training.*—(l) *Content and duration of training.* The home health aide training must include classroom and supervised practical training that totals at least 75 hours. A minimum of 16 hours of classroom training must precede a minimum of l6 hours of supervised practical training. ''Supervised practical training'' means training in a practicum laboratory or other setting in which the trainee demonstrates knowledge while performing tasks on an individual under the direct supervision of a registered nurse or licensed practical nurse. The home health aide training program must address each of the following subject areas:

(i) Communication skills, including the ability to read, write, and make brief and accurate oral and written presentations to patients, care givers, and other HHA staff.

(ii) Observation, reporting, and documentation of patient status and the care or service furnished.

(iii) Reading and recording temperature, pulse, and respiration.

(iv) Basic infection control procedures.

(v) Basic elements of body functioning and changes in body function that must be reported to an aide's supervisor.

(vi) Maintenance of a clean, safe, and healthy environment.

(vii) Recognizing emergencies and knowledge of emergency procedures.

(viii) The physical, emotional, and developmental needs of and ways to work with the populations served by the HHA, including the need for respect for the patient, his or her privacy, and his or her property.

(ix) Appropriate and safe techniques in personal hygiene and grooming that include—

(A) Bed bath.

(B) Sponge, tub, or shower bath.

(C) Hair shampoo (sink, tub, or bed).

(D) Nail and skin care.

(E) Oral hygiene.

(F) Toileting and elimination.

(x) Safe transfer techniques and ambulation.

(xi) Normal range of motion and positioning.

(xii) Adequate nutrition and fluid intake.

(xiii) Any other task that the HHA may choose to have the home health aide perform. The HHA is responsible for training the home health aide, as needed, for skills not covered in this basic checklist.

(2) *Conduct of training: Eligible training organizations.* A home health aide training program may be offered by any organization except an HHA that, within the previous 2 years, has been found——

(i) Out of compliance with the requirements of paragraphs (b) or (c) of this section;

(ii) To permit an individual that does not meet the definition of ''home health aide'' as specified in paragraph (a) of this section to furnish home health aide services (with the exception of licensed health professionals and volunteers);

(iii) Has been subject to an extended (or partial extended) survey as a result of having been found to have furnished substandard care (or for other reasons at the discretion of HCFA or the State);

(iv) Has been assessed a civil monetary penalty of not less than $5,000 as an intermediate sanction;

(v) Has been found to have compliance deficiencies that endanger the health and safety of the HHA's patients and has had a temporary management appointed to oversee the management of the HHA;

(vi) Has had all or part of its Medicare payments suspended; or

(vii) Under any Federal or State law

(A) Has had its participation in the Medicare program terminated;

(B) Has been assessed a penalty of not less than $5,000 for deficiencies in Federal or State standards for HHAs;

(C) Was subject to a suspension of Medicare payments to which it otherwise would have been entitled;

(D) Had operated under a temporary management that was appointed to oversee the operation of the HHA and to ensure the health and safety of the HHA's patients; or

(E) Was closed or had its residents transferred by the State.

(3) *Conduct of training: Qualifications for instructors.* The training of home health aides must be performed by or under the supervision of a registered nurse. Other individuals may be used to provide instruction under the general supervision of the registered nurse.

(4) *Documentation of training.* The HHA must maintain documentation of the aide's successful completion of a home health aide training and competency evaluation program or competency evaluation program or State approved nurse aide training and competency evaluation to demonstrate that the requirements of this standard are met.

(c) *Standard: Competency evaluation.* An individual may furnish home health services on behalf of an HHA only after that individual has successfully completed a competency evaluation program as described in this section.

(l) The HHA must ensure that all individuals who furnish home health aide services to patients meet the competency evaluation requirements of this section. Personal care aides who exclusively provide personal care services to Medicaid patients under a State Medicaid personal care benefit must meet the requirements specified in paragraph (g) of this section.

(2) The competency evaluation must address each of the subjects listed in paragraphs (b)(l)(ii) through (xiii) of this section. Subject areas specified under paragraphs (b)(l)(iii), (ix), (x), and (xi) of this section must be evaluated by observing the aide's performance of the task with a patient. The remaining subject areas may be evaluated through written examination, oral examination, or after observation of the home health aide with a patient.

(3) A home health aide competency evaluation program may be offered by any organization, except as specified in paragraph (b)(2) of this section.

(4) The competency evaluation must be performed by a registered nurse in consultation with other skilled professionals, as appropriate.

(5) A home health aide is not considered competent in any task for which he or she is evaluated as ''unsatisfactory.'' The aide must not perform that task without direct supervision by a licensed nurse until after he or she received training in the task for which he or she was evaluated as ''unsatisfactory'' and passes a subsequent evaluation with ''satisfactory.''

(6) The HHA must maintain documentation that demonstrates the requirements of this standard are met.

(d) *Standard: Inservice training.*

(l) The home health aide must receive at least l2 hours of inservice training in a l2-month period. During the first l2 months of employment, hours may be prorated based on the date of hire. The in-service training may occur while the aide is furnishing care to a patient.

(2) Inservice training may be offered by any organization except one that is excluded under paragraph (b)(2) of this section.

(3) The inservice training must be supervised by a registered nurse.

(e) *Standard: Home health aide assignments.*

(l) The home health aide is assigned to a specific patient by the registered nurse. Written patient care instructions for the home health aide must be prepared by the registered nurse or other appropriate skilled professional (that is, physical therapist, speech language pathologist, or occupational therapist) who is responsible for the supervision of the home health aide as specified under paragraph (f) of this section.

(2) The home health aide provides services that are ordered by the physician in the plan of care and that the aide is permitted to perform under State law. The duties of a home health aide include the provision of hands-on personal care, performance of simple procedures as an extension of therapy or nursing services, assistance in ambulation or exercises, and assistance in administering medications that are ordinarily self-administered.

(3) Home health aides must report changes in the patient's medical, nursing, rehabilitative, and social needs to the registered nurse or other appropriate skilled professional, and complete appropriate records in compliance with the HHA policies and procedures.

(f) *Supervision.*

(l) If the patient receives skilled nursing care, the registered nurse must perform the supervisory visit required under paragraph (f)(2) of this section. If the patient is not receiving skilled nursing care, but is receiving another skilled service (that is, physical therapy, occupational therapy, or speech-language pathology services), supervision may be provided by the appropriate skilled professional. Documentation of the supervisory visit must be made in the patient's record.

(2) The registered nurse (or another professional described in paragraph (f)(l) of this section) must make an onsite visit to the patient's home no less frequently than every 2 weeks.

(3) If home health aide services are provided to a patient who is not receiving skilled nursing care, physical or occupational therapy, or speech-language pathology services, the registered nurse must make a supervisory visit to the patient's home no less frequently than every 62 days. In these cases, each supervisory visit must occur while the home health aide is providing patient care to ensure that the aide is properly caring for the patient.

(4) If home health aide services are provided by an individual who is not employed directly by the HHA, the services of the home health aide must be provided under arrangement as defined in section l86l(w)(l) of the Act (42 U.S.C. 1395 x(w)). If the HHA chooses to provide home health aide services under arrangement with another organization, the HHA's responsibilities include, but are not limited to—

(i) Ensuring the overall quality of care provided by the aide;

(ii) Supervision of the aide's services as described in paragraphs (f)(l) and (2) of this section; and

(iii) Ensuring that home health aides providing services under arrangement have met the training or competency evaluation requirements, or both, of this condition.

(g) *Standard: Medicaid personal care aide services—Medicaid personal care benefit.*

(l) *Applicability.* This paragraph applies to individuals who are employed by HHAs exclusively to furnish personal care attendant services under a Medicaid personal care benefit.

(2) *Rule.* An individual may furnish personal care services, as defined in § 440.170 of this chapter, on behalf of an HHA after the individual has been found competent by the State to furnish those services for which a competency evaluation is required by this section and which the individual is required to perform. The individual need not be determined competent in those services listed in this section that the individual is not required to furnish.

Subpart C—Organizational Environment

§ 484.100 Condition of participation: Compliance with Federal, State, and local laws.

(a) *Standard: Compliance with Federal, State, and local laws and regulations.* The HHA and its staff must operate and furnish services in compliance with all Federal, State, and local laws and regulations applicable to HHAs. If a State has established licensing requirements for HHAs, all HHAs must be approved by the State licensing authority as meeting those requirements whether or not they are required to be licensed by the State.

(b) *Standard: Disclosure of ownership and management information.* The HHA must comply with the requirements of part 420, subpart C of this chapter. The HHA also must disclose the following information to the State survey agency at the time of the HHA's initial request for certification, for each survey, and at the time of any change in ownership or management:

(l) The name and address of all persons with an ownership or control interest in the HHA as defined in §§ 420.20l, 420.202, and 420.206 of this chapter.

(2) The name and address of each person who is an officer, a director, an agent, or a managing employee of the HHA as defined in §§ 420.20l, 420.202, and 420.206 of this chapter.

(3) The name and address of the corporation, association, or other company that is responsible for the management of the HHA, and the name and address of the chief executive officer and the chairperson of the board of directors of that corporation, association, or other company responsible for the management of the HHA.

(c) *Standard: Licensing.* The HHA and its branches must be licensed in accordance with State licensure laws, if applicable, prior to providing Medicare reimbursed services.

(d) *Standard: Laboratory services.*

(l) If the HHA engaged in laboratory testing outside of the context of assisting an individual in self-administering a test with an appliance that has been cleared for the purpose by the Food and Drug Administration, such testing must be in compliance with all applicable requirements of part 493 of this chapter.

(2) If the HHA chooses to refer specimens for laboratory testing to another laboratory, the referral laboratory must be certified in the appropriate specialties and subspecialties of services in accordance with the applicable requirements of part 493 of this chapter.

§ 484.105 Condition of participation: Organization and administration of services.

The HHA must organize, manage, and administer its resources to attain and maintain the highest practicable functional capacity for each patient regarding medical, nursing, and rehabilitative needs as indicated by the plan of care.

(a) *Standard: Governing body.* A governing body (or designated persons so functioning) must assume full legal authority and responsibility for the management and provision of all home health services, fiscal operations, quality assessment and performance improvement, and appoints a qualified administrator who is responsible for the day-to-day operation designated persons to carry out these functions.

(b) *Standard: Primary HHA.* The HHA that accepts the patient becomes the primary HHA and assumes responsibility for the interdisciplinary coordination and provision of services ordered on the patient's plan of care, and continuity of care, whether the services are provided directly or under arrangement.

(c) *Standard: Parent-branch relationship.*

(1) The parent home health agency provides direct support and administrative control of its branches.

(2) The branch office is located sufficiently close to the parent home health agency to effectively share administration, supervision, and services in a manner that renders it unnecessary for the branch separately to meet the conditions of participation as an HHA.

(d) *Standard: Services under arrangement.*

(1) The HHA must ensure that all arranged services provided by other entities or individuals meet the requirements of this part and the requirements of section 1861(w) of the Act (42 U.S.C. 1395x(w)).

(2) An HHA that has a written agreement with another agency or organization to furnish services to the HHA's patients maintains overall responsibility for those services.

(e) *Standard: Services furnished.* Part-time or intermittent skilled nursing services and at least one other therapeutic service (physical, speech, or occupational therapy; medical social services; or home health aide services) are made available on a visiting basis, in a place of residence used as a patient's home. An HHA must provide at least one of the qualifying services directly, but may provide the second qualifying service and additional services under arrangement with another agency or organization.

(f) *Standard: Physical therapy or speech-language pathology services.* An HHA that furnishes outpatient physical therapy or speech language pathology services must meet all of the applicable conditions of this part and the additional health and safety requirements set forth in §§ 485.711, 485.713, 485.715, 485.719. 485.723, and 485.727 of this chapter.

§ 484.110 Condition of participation: Clinical records.

A clinical record containing past and current findings is maintained for every patient who is accepted by the HHA for home health service. Information contained in the clinical record must be accurate, available to the patient's physician and appropriate HHA staff, and may be maintained electronically.

(a) *Standard: Contents of clinical record.* The record must include:

(1) The patient's current comprehensive assessment, clinical/progress notes, and plan of care;

(2) Responses to medications, treatments and services;

(3) A description of measurable outcomes relative to goals in the patient's plan of care that have been achieved; and

(4) A discharge summary that is available to physicians upon request.

(b) *Standard: Authentication.* All entries must be legible, clear, complete, and appropriately authenticated and dated. Authentication must include signatures or a secured computer entry by a unique identifier of a primary author who has reviewed and approved the entry.

(c) *Standard: Retention of records.* Clinical records must be retained for 5 years after the month the cost report to which the records apply is filed with the intermediary, unless State law stipulates a longer period of time. The HHA's internal policies must provide for retention of the clinical records even if the HHA discontinues operations. If a patient is transferred to another health facility, a copy of the records or discharge summary must be sent with the patient.

(d) *Standard: Protection of records.* Patient information and the record must be safeguarded against loss or unauthorized use.

§ 484.115 Personnel qualifications for skilled professionals.

(a) *General qualification requirements.* Except as specified in paragraphs (b) and (c) of this section, all skilled professionals who provide services directly by or under arrangements with an HHA must be legally authorized (licensed or, if applicable, certified or registered) to practice by the State in which he or she performs the functions or actions, and must act only within the scope of his or her State license or State certification or registration.

(b) *Exception for Federally defined qualifications.* The following Federally defined qualifications must be met:

(1) For physicians, the qualifications and conditions as defined in section 1861(r) of the Act and implemented at § 410.20 of this chapter).

(2) For speech language pathologists, the qualifications specified in section 1861(ll)(1) of the Act.

(3) For home health aides, the qualifications required by section 1891(a)(3) of the Act and implemented at § 484.75.

(c) *Exceptions when no State licensing laws or State certification or registration requirements exist.* If no State licensing laws or State certification or registration requirements exist for the profession, the following requirements must be met:

(1) The administrator of a home health agency must—

(i) Be a licensed physician; or

(ii) Hold an undergraduate degree and—

(A) Be a registered nurse; or

(B) Have education and experience in health service administration, with at least one year of supervisory or administrative experience in home health care or a related health care program, and in financial management.

(2) *An occupational therapist must*—

(i) Be a graduate of an occupational therapy curriculum accredited jointly by the Committee on Allied Health Education and Accreditation of the American Medical Association and the American Occupational Therapy Association; or

(ii) Be eligible for the National Registration Examination of the American Occupational Therapy Association; or

(iii) Have 2 years of appropriate experience as an occupational therapist, and have achieved a satisfactory grade on a proficiency examination conducted, approved, or sponsored by the U.S. Public Health Service, except that such determinations of proficiency do not apply with respect to persons initially licensed by a State or seeking initial qualification as an occupational therapist after December 31, 1977.

(3) *An occupational therapy assistant must*—

(i) Meet the requirements for certification as an occupational therapy assistant established by the American Occupational Therapy Association; or

(ii) Have 2 years of appropriate experience as an occupational therapy assistant, and have achieved a satisfactory grade on a proficiency examination conducted, approved, or sponsored by the U.S. Public Health Service, except that such determinations of proficiency do not apply with respect to persons initially licensed by a State or seeking initial qualification as an occupational therapy assistant after December 31, 1977.

(4) *Physical therapist. A person who*—

(i) Has graduated from a physical therapy curriculum approved by—

(A) The American Physical Therapy Association;

(B) The Committee on Allied Health Education and Accreditation of the American Medical Association; or

(C) The Council on Medical Education of the American Medical Association and the American Physical Therapy Association; or

(ii) Prior to January 1, 1966—

(A) Was admitted to membership by the American Physical Therapy Association;

(B) Was admitted to registration by the American Registry of Physical Therapist; or

(C) Has graduated from a physical therapy curriculum in a 4-year college

or university approved by a State department of education; or

(iii) Has 2 years of appropriate experience as a physical therapist, and has achieved a satisfactory grade on a proficiency examination conducted, approved, or sponsored by the U.S. Public Health Service except that such determinations of proficiency do not apply with respect to persons initially licensed by a State or seeking qualification as a physical therapist after December 31, 1977; or

(iv) Was licensed or registered prior to January 1, 1966, and prior to January 1, 1970, had 15 years of full-time experience in the treatment of illness or injury through the practice of physical therapy in which services were rendered under the order and direction of attending and referring doctors of medicine or osteopathy; or

(v) If trained outside the United States—

(A) Was graduated since 1928 from a physical therapy curriculum approved in the country in which the curriculum was located and in which there is a member organization of the World Confederation for Physical Therapy;

(B) Meets the requirements for membership in a member organization of the World Confederation for Physical Therapy,

(5) *Physical therapist assistant.* A person who—

(i) Has graduated from a 2-year college-level program approved by the American Physical Therapy Association; or

(ii) Has 2 years of appropriate experience as a physical therapy assistant, and has achieved a satisfactory grade on a proficiency examination conducted, approved, or sponsored by the U.S. Public Health Service, except that these determinations of proficiency do not apply with respect to persons initially licensed by a State or seeking initial qualification as a physical therapy assistant after December 31, 1977.

(6) *Public health nurse.* A registered nurse who has completed a baccalaureate degree program approved by the National League for Nursing for public health nursing preparation or postregistered nurse study that includes content approved by the National League for Nursing for public health nursing preparation.

(7) *Registered nurse.* A graduate of a school of professional nursing.

(8) *Social work assistant.* A person who—

(i) Has a baccalaureate degree in social work, psychology, sociology, or other field related to social work, and has had at least 1 year of social work experience in a health care setting; or

(ii) Has 2 years of appropriate experience as a social work assistant, and has achieved a satisfactory grade on a proficiency examination conducted, approved, or sponsored by the U.S. Public Health Service, except that these determinations of proficiency do not apply with respect to persons initially licensed by a State or seeking initial qualification as a social work assistant after December 31, 1977.

(9) *Social worker.* A person who has a master's degree from a school of social work accredited by the Council on Social Work Education, and has 1 year of social work experience in a health care setting.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: July 15, 1996.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: August 16, 1996.

Donna E. Shalala,

Secretary.

[FR Doc. 97–5316 Filed 3–5–97; 9:45 am]

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42 CFR Part 484

[HSQ–238–P]

RIN 0938–AH74

Medicare and Medicaid Programs: Use of the OASIS as Part of the Conditions of Participation for Home Health Agencies

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would add additional requirements to the proposed revision to the conditions of participation for home health agencies (HHAs) which also appear in this issue of the Federal Register. Specifically, this proposed rule would require that HHAs use a standard core assessment data set, the ''Outcomes and Assessment Information Set'' (OASIS), when evaluating adult, non-maternity patients.

This proposed rule is an integral part of the Administration's efforts to achieve broad-based, measurable improvement in the quality of care furnished through Federal programs. It is a fundamental component in the transition to a quality assessment and performance improvement approach that focuses on stimulating measurable improved outcomes of care and patient satisfaction in the Medicare and Medicaid home health benefit while at the same time reducing burdens on providers.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on June 9, 1997.

ADDRESSES: Mail written comments (one original and three copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HSQ–238-P, P.O. Box 7518, Baltimore, MD 21207–0519.

If you prefer, you may deliver your written comments (one original and three copies) to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201, or

Room C5–09–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Comments may also be submitted electronically to the following e-mail address: hsq238phcfa.gov. E-mail comments must include the full name and address of the sender and must be submitted to the referenced address in order to be considered. All comments must be incorporated into the e-mail message because we may not be able to access attachments. Electronically submitted comments will be available for public inspection at the Independence Avenue address below.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HSQ–238–P. Comments received timely will be available for pubic inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW, Washington, D.C., on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone (202) 690–7890).

For comments that relate to information collection requirements, mail a copy of the comments to: Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Allison Herron Eydt, HCFA Desk Officer.

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FOR FURTHER INFORMATION CONTACT: Mary Vienna, (410) 786–6940.

SUPPLEMENTARY INFORMATION:

I. Background

A. Purpose of Proposed Regulation

Separately in this issue of the Federal Register, we are publishing a notice of proposed rulemaking that would revise the current conditions of participation that HHAs must meet to participate in the Medicare program, the Medicaid program, or both programs. Those proposed regulations would make the conditions of participation more patient-centered and outcome-oriented and provide the HHAs with more flexibility to operate their programs. As an important part of those proposed revisions, we are introducing the proposed requirement that each HHA develop, implement, and manage an outcome-based quality assessment and performance improvement program. Such a program would provide a foundation for enabling an HHA to monitor the impact of its care on its customers' health status and satisfaction. The information that the HHA derives from this program will enable the HHA to implement real and lasting change to enhance outcomes of care.

In this proposed rule, we are proposing that Medicare-approved HHAs and those HHAs that are required to meet Medicare conditions of participation (which, by definition, includes Medicaid HHAs and managed care organizations providing home health services to Medicare and Medicaid beneficiaries) be required to incorporate the core standard assessment data set included in this proposal, called the ''Outcomes and Assessment Information Set'' (OASIS), into their comprehensive assessment process. (The use of the term ''HHA'' will be used throughout this discussion as a generic term to apply to all environments in which this regulation would apply.)

We intend that the OASIS become one of the most important aspects of the HHA's quality assessment and performance improvement efforts. By integrating a core standard assessment data set into its own more comprehensive assessment system, an HHA can use such a data set as the foundation for valid and reliable information for patient assessment, care planning, and service delivery, as well as to build a strong and effective quality assessment and performance improvement program.

B. Background of the OASIS

1. How HHA Quality Indicators Were Developed

We have long been interested in the development of outcome measures in health care. In 1988, we entered into a contract with the Center for Health Policy Research and the Center for Health Services Research at the University of Colorado Health Sciences Center to develop, test, and refine a system of outcome measures that could be used for outcome-based quality improvement in HHAs. The Robert Wood Johnson Foundation provided funding to support work on additional, related tasks. The system is intended to form the foundation for continuous quality improvement (which we call in the proposed conditions of participation published elsewhere in this issue of the Federal Register ''quality assessment and performance improvement'') that could be used to enhance care in agencies where quality is lacking, and to reinforce and further improve patient outcomes and satisfactory in HHAs where care is already exemplary.

Before the system could be constructed, numerous definitional and methodological issues had to be addressed. We are presenting a brief summary of those issues as part of this preamble. Anyone wishing a more detailed explanation of the work that was necessary to develop this system may request one of the publications referenced in this preamble.

We adopted the consensus definition of ''quality'' developed by the Institute of Medicine that states ''quality is the degree to which health services to individuals and populations increase the likelihood of desired health outcomes and are consistent with current professional knowledge.'' The usefulness of this definition is threefold. First, it recognizes that ''quality'' can occur in varying amounts, not simply in an all-or-nothing manner. Second, this definition encompasses the beneficiary's desires and expectations for outcomes, and not just what the ''professional'' decides. Third, it does not guarantee the desired outcome will be achieved. Rather, quality care ''increases the likelihood'' that needed or desired outcomes will be achieved. In this regard, the implied relationship between quality care or quality of services and outcomes highlights the fact that higher quality care should produce better outcomes. Consequently, the most effective indicator of the quality of care is the actual, consistent attainment of desired health outcomes. As a result, we regard outcomes as central to ensuring and improving care.

Overall, we define an ''outcome'' as a ''change in health status over time.'' In using this definition, we recognize that ''health status'' is a broad term, encompassing physiologic, functional, cognitive, social, and mental health. To properly measure a specific outcomes in any of these areas, it is necessary to collect precise information on the health status indicator of interest at the start of care and at followup points. Satisfaction, however, need only be measured at discharge, though it can be measured at interim points as well.

For our purposes, a patient- or consumer-level outcome can be thought of as a change in health status that occurs during the timespan that begins with the start of care and ends with either the discharge from the HHA or some other followup point after the start of care. Thus, changes in the status of a wound, ability to ambulate, shortness of breath (dyspnea), or ability to manage oral medications are outcomes when such changes are assessed between the start of care and followup time points. Hospitalization and use of emergency care during the home care interval can also be regarded as outcomes, since these events usually occur as a result of a change in health status, typically of an untoward nature. Indicators of consumer satisfaction are also outcomes in that they may represent changes in

cognitive or emotional status in response to home health care. Nonetheless, we sometimes speak of outcomes *and* satisfaction in this proposal to emphasize the importance of beneficiary satisfaction as a particular type of outcome.

A critical element of any quality assessment and performance improvement program in home health care is precise information about performance, particularly consumer outcomes. Such information must be available to the HHA so it can identify and remedy poor outcomes, identify and reinforce exemplary outcomes, and evaluate progress resulting from remedied or reinforced actions. The most efficient way in which HHAs can gather such information is by maximizing the overlap between items needed to measure patient outcomes and those routinely used for purposes of patient assessment, care planning, and service delivery.

The terms ''quality indicators,'' ''performance measures,'' and ''outcome measures'' are often used interchangeably, though technically they can vary somewhat in meaning. Regardless, they all refer to attributes of care and satisfaction that can be used to gauge quality in specific areas. For example, the degree of improvement in a functional area (such as ability to walk after a hip replacement) is a quality indicator. However, defining and quantifying that improvement results in a ''performance measure'' or ''outcome measure'' that assigns a numeric value to the attribute being evaluated. So, while it is accurate to say that improvement in ambulation is a ''quality indicator,'' the improvement becomes a precise and usable quantity measurement when we assign numbers to the patient's performance.

The first step in the development of quality indicators was to agree on outcomes that can be used as valid and reliable indicators of quality care. In dealing with such issues as payment and utilization, the outcomes of care and level of satisfaction the patient experiences can be overlooked. Although outcomes are not yet being measured systematically, we often assume that the care provided accomplishes what we expect. Home health care is no exception. While we recognize that patients have a strong preference for home care over most alternatives, we know little about the effectiveness of home care. Interest in the outcomes of home care, therefore, was arising from payers, accrediting bodies, consumers, and the home care industry itself. This interest provided impetus and credibility to the search for outcomes that can be used a valid and reliable indicators of quality care.

The way in which well-tested and established quality indicators are developed is straightforward, although time consuming and resource intensive. Clinical experts (especially those who actually deliver home care services to people), researchers, patients, and others (for example, administrators) ''nominate'' aspects of the total care process and the outcomes of care across a variety of patient conditions and problems. The list of candidate quality indicators can be very long, including relevant indicators from research, applied literature, and current use. From this list, expert panels group the nominees and specify them more precisely as workable representations of attributes of care, outcomes, or satisfaction that can be measured.

Once the set of nominated quality indicators (outcome indicators in this case) is refined and defined, it is further tested for validity, utility and reliability. When we test for validity and utility, we consider such issues as whether or not the indicators actually reflect what they purport to reflect in terms of patient outcomes, the ability to detect differences among patient groups or types of agencies which are expected to vary in terms of outcomes, utility for examining the effectiveness of care, and acceptance among clinicians. When we test for reliability, we consider such issues as whether or not the information collected on the same patient by different evaluators yields similar judgments about the performance indicators being measured.

As an illustration, we know that improvement in ability to ambulate is a quality indicator. During development of performance measures based on the nominated quality indicators, the specific definition of ''ambulation/locomotion status,'' that was used in testing for validity and reliability, included a six-level scale (0–5). This scale described ambulation from completely bedfast to independence by using specific and precise terminology associated with each of the six levels on the scale. The wording for each level was carefully chosen and refined through both expert review and empirical testing. For example, the one-level in the scale states: ''Chair fast, unable to ambulate even with assistance but is able to wheel self independently.'' The wording for this particular level was specified, reviewed, and then tested by having different care providers collect this information on the same patients to assess the extent of agreement and reliability among different raters. Appropriate changes were made and further testing was conducted in terms of utility and clinical acceptability, with additional refinements occurring as needed.

To properly measure outcomes as changes in health status between two time points, reliable and precise health status scales such as the ambulation scale are needed to render the outcome measures themselves reliable and precise. All health status items in the OASIS underwent such testing since these items will be used for either measuring outcomes or for risk-adjusting outcomes for potential differences in agency risk factors or case mix. The OASIS also contains items relating to independence of functioning and available family and environmental support. While not directly ''health status items,'' they are vital measurements of the context in which a person's health status exists. For example, people with the same health status but with different supports may experience different outcomes.

The criteria the researchers used for selecting the outcome measures included:

(1) Clinical meaningfulness in terms of perceived importance of the measure for outcome-based quality improvement;

(2) Interrater reliability of the data items needed to compute the measures as reflected by two or more reviewers rating a patient's condition similarly;

(3) Diversity of the measures in terms of the different dimensions of health status including functional, physiological, behavioral/emotional, and cognitive status;

(4) Minimal redundancy in terms of clinical information content within the entire measure set;

(5) Validity as reflected by the abilities of the measures to detect agency-level differences in quality of care;

(6) Validity as indicated by the abilities of the measures to detect differences between patient groups or types of agencies expected to vary in terms of outcomes;

(7) Validity in terms of the clinical meaningfulness of relationships among outcome measures;

(8) Validity as reflected by the clinical meaningfulness of the relationships between outcome measures and risk factors or case mix variables;

(9) Sufficient prevalence from a statistical perspective so that the outcome measures would not signify extremely rare or extremely common events;

(10) Minimal statistical redundancy among measures, so that individual measures each can be shown to convey unique information; and

(11) Utility of the data items employed to define and compute outcome measures in terms of the meaningfulness and face validity of such items for assessment and care planning for home care patients.

As we discuss in detail in section I.B.2 of this preamble, the individual items of the OASIS are valid and reliable in computing those outcome measures of patient health status shown to be useful ''quality indicators'' for home care. When the HHA staff who complete the comprehensive assessment use the OASIS as part of the process, they are, in fact, laying the groundwork for planning an effective course of care for an individual patient and for a set of comparable performance data aggregated across patients that can help to shape the agency's agenda for continuous improvement.

We intend to require that HHAs use the OASIS exactly as specified. This requirement is a necessary predicate to building a valid, reliable, comparable data set of outcomes. The items on the OASIS underwent rigorous validity and reliability testing, as discussed in section I.B.2. of this preamble. Consequently, trained individuals can have confidence in using the data items as part of their comprehensive assessment of patients. This confidence extends, then, to the comparability of the data acquired using the same items to amass information from other patients, either in the same HHA or others, as long as the assessments are conducted accurately, using the measurement criteria spelled out for each item. Altering the items or using a different tool and transposing the data onto the OASIS destroys the essential validity and, therefore, the comparability of the data collected. The HHA can rearrange and/or distribute the OASIS items within the agency's comprehensive assessment system as long as the items themselves remain exactly as written and specified by the Secretary.

While this explanation of how the quality indicators were developed is brief, the actual work to develop more than 150 indicators took most of 5 years using expert clinical panels and volunteer HHAs for empirical field testing. Further details on how the home health quality indicators were developed, including validity and reliability testing, are included in the final report of *A Study to Develop Outcome-Based Quality Measures for Home Care*, available from the Center for Health Policy Research and Center for Health Services Research, University of Colorado, Health Sciences Center, 1355 S. Colorado Blvd., Suite 306, Denver, CO 80222. Additional information on outcome-based quality improvement can also be found in ''Measuring and Assuring the Quality of Home Care,'' *Health Care Financing Review*, 16(1):35–67, Fall 1994, and *Outcome Based Quality Improvement: A Manual for Home Care Agencies on How to Use Outcomes*, August 1995, National Association for Home Care, 228 South Street, SE., Washington, DC 20003.

2. Evolution of Medicare's Core Standard Assessment Data Set (OASIS)

As part of the Medicare Home Health Initiative started in 1994, we began discussions with the industry, professional and consumer groups, and enforcement agencies. These discussions articulated our desire that the new conditions of participation serve both the clinical needs of the agency and our emerging quality assessment and performance improvement agenda.

In late 1994, we convened a workgroup of clinical assessment experts representing HHAs and national associations of home care providers along with other experts in assessment, including a representative from the University of Colorado, to help shape the development of an assessment tool. The group suggested it was unnecessary to mandate a comprehensive assessment tool since the majority of agencies are already using such tools. The understandable diversity in such tools that arises from caring for special types of patients (for example, pediatric, chronic, high technology, or Human Immunodeficiency Virus patients) would render a single mandated comprehensive tool unwieldy. The group agreed that the required assessment set should be parsimonious, have maximal overlap with the types of information agencies are already collecting at assessment (to the extent possible), and be shorter and less complicated than the Resident Assessment Instrument, another Federal assessment instrument mandated for use by nursing homes.

The group recommended that we use the data items developed by the University of Colorado for computing risk-adjusted patient outcomes. The precision of the individual items in this data set makes them particularly useful in patient assessment and care planning in addition to their intended use in measuring outcomes. The workgroup recommended the addition of a small number of assessment items for a total of 79 (plus 10 patient identifier items, for example Medicare number, that are commonly used already for billing and other administrative purposes), and the core standard assessment data set was completed. We wish to make it clear that this data set is not, therefore, intended to constitute a complete comprehensive assessment instrument. Rather, the data set comprises items that are a necessary part of a complete comprehensive assessment and are essential to uniformly and consistently measuring patient outcomes. These items are already used in one form or another by virtually all HHAs, and many more are usually used by HHAs that conduct thorough assessments. Likewise, the OASIS comprises fewer items than the Resident Assessment Instrument, another Federal assessment instrument mandated for use by nursing homes.

The workgroup recommended that HCFA determine: (1) How the core standard assessment data set could be incorporated into HHAs' patient assessment processes (HHAs would need to include additional items for the purpose of ''comprehensive'' patient assessment); and (2) if the tool was effective in assisting home health clinical staff to assess certain aspects of patient health and functional status, thus providing information necessary for effective and efficient care planning and service delivery. As the workgroup was concluding its work on the core standard assessment data set in early 1995, the University of Colorado was embarking on a new HCFA-funded project to demonstrate how the quality indicators developed during the previous 5 years could be used. The primary goal of the new project was to assess whether the data set would be of value in targeting and guiding improvements in outcomes and satisfaction for HHA patients. The researchers agreed to use the data set as modified by HCFA and to pilot its effectiveness as the core standard assessment data set. It was at this point that the data set was named the *O*utcomes and *AS*sessment *I*nformation *S*et, or OASIS.

The demonstration currently underway involves the voluntary participation of 50 HHAs distributed across the country. They have been trained to use the OASIS and have begun collecting and transmitting data to the Research Center at the University of Colorado. (The Research Center is also testing a telephone satisfaction questionnaire that is being administered to patients after HHA discharge. The results will help assess the relationship between outcomes and satisfaction.) Data are returned to the HHA as outcome reports, so that the HHA can see how it is performing in terms of

patient outcomes compared with other HHAs in the project. As each data reporting period passes, the database builds, providing additional comparative data back to agencies for use in planning and implementing performance improvement activities. Subsequent outcome reports can assist in evaluating the effectiveness of such activities.

For example, a particular HHA receives an outcome report that shows that 20 percent of its orthopedic patients improved in ability to ambulate by either the 60th day of treatment or the date of discharge, depending upon which came first. The HHA's 20-percent outcome compares with a 40-percent aggregated outcome of the orthopedic patients from all demonstration agencies. Because this 20-percent outcome finding is significantly less than the 40-percent aggregated outcome, the staff makes a determination that this is an outcome that should be investigated further. Using record review, team evaluation and other quality improvement techniques, the HHA staff determines that a potential reason for the low rate of improvement is lack of coordination between physical therapists and other care providers. This lack of coordination, in turn, results in minimal reinforcement of patient exercise programs by others on the care delivery team. The agency staff, therefore, develops and implements a precise action plan or performance improvement plan that strengthens team coordination of specific and relevant caregiving actions. The next outcome report indicates that the number of orthopedic patients improving in ability to ambulate is 35 percent, suggesting that the performance improvement activities resulted in better patient care, thereby producing improved outcomes.

Thus, collection of OASIS data can be used not only in patient-level applications (assessment, care planning, and care delivery) but also for agency-level performance improvement. As an HHA improves over time across various outcome dimensions, the aggregated data will show improvement as well, and average agency performance will likewise continue to improve. Not only will this be advantageous for Medicare beneficiaries and other home care clients, but it will be of value to the home care industry in demonstrating its effectiveness. We want to stress, however, that in order for the OASIS data to be helpful for *all* its purposes, the OASIS items must be filled out accurately. As they begin to collect the OASIS items, HHAs should set up procedures to monitor data accuracy such as conducting validation visits to verify accuracy, interdisciplinary comparisons and record reviews. In fact, data entry accuracy can, and should be, an essential part of the HHA's quality assessment and improvement program, since data accuracy is a fundamental building block of an effective program.

We are aware that large numbers of HHAs are using the OASIS in an informal environment, without direction or guidance from HCFA or the University of Colorado. While we are looking to the Medicare demonstration to answer operational questions regarding the aggregation of OASIS data and their use to improve patient outcomes, we are interested in the experience of those HHAs that are using the OASIS under their own initiative. We are seeking public comments from those HHAs on the following questions:

- How is the OASIS helpful in determining changes in patient health status between two points in time?
- How is the OASIS useful for measuring the outcomes of patients who are prescribed physical therapy, occupational therapy, speech therapy, skilled nursing services, or aide services? How is the OASIS useful for patient evaluation and management?
- How is the OASIS useful for care planning and prescribing services? Could the OASIS be made more useful and, if so, how?
- How is the data in the OASIS useful for identifying and interpreting differences in both the severity and complexity within agency caseloads? Could the OASIS be made more useful and, if so, how?
- What level and type of support (for example, training, monitoring of staff) is required to generate information from the OASIS for use in assessment, care planning, and quality assessment and performance improvement?
- If you have used the OASIS data to produce agency-level reports, are they useful in identifying negative and positive patient outcomes?
- Are there specific domains in which the OASIS is particularly strong or particularly weak?
- Are there other data items that produce information that may be more useful in measuring outcomes in a particular domain?

3. Content and Planned Evolution of the OASIS

For purposes of public comment, we are reprinting the current version of the OASIS in section II of this preamble. The Center for Health Policy Research at the University of Colorado has granted permission for this sample OASIS survey to be published and reproduced. HCFA will provide HHAs with copies of the OASIS and instructions for its use as a manual issuance when the final rule is published. All OASIS data items were developed for outcome measurement, risk adjustment, or patient identifiers. Data items address demographics and patient history, living arrangements, supportive assistance, sensory status, integumentary status, respiratory status, elimination status, neuro/emotional/behavioral status, activities of daily living, medications, equipment management, emergent care and discharge information. While some data items do not directly address health status, they are vital measurements of the context in which a person's health status exists. For example, people with the same health status but with different supports (financial, caregiver, etc.) may experience different health outcomes. These characteristics should be part of a comprehensive patient assessment, but we again emphasize that the OASIS was not developed to be a comprehensive assessment instrument. HHAs must supplement the OASIS items to comprehensively assess the health status and care needs of patients. For example, the OASIS does not include vital signs, which are a common part of a patient's assessment.

Most OASIS items require the same information that the majority of care providers currently gather in patient assessment, but the OASIS requires the information on a more precise scale. For example, many care providers assess each patient's ability to bathe, but only use three levels, independent, needs moderate assistance, or dependent. The OASIS items ask the care provider to assess the same functional ability (bathing) on a more precise six-level scale. This greater precision results in items that are more descriptive for clinical purposes and more reliable and valid statistically and, thereby, improves their utility in an outcomes improvement, database environment. Consequently, items in clinical records that have analogues in the OASIS should be replaced by the corresponding OASIS items so that all certified agencies will be collecting information using precisely the same items to ultimately measure and risk adjust outcomes.

When the final rule has been promulgated, we will include the instructions and definitions necessary to use the OASIS in the notification to the HHAs. At the present time, however, we wish to clarify several items in the current OASIS. These are:

- Overall Progress, Rehabilitative Prognosis, and Life Expectancy

While these are common assessment items, they are included in this version of the OASIS with the expectation that they will be a part of the data we intend to collect. They have been shown, thus, far, to be highly predictive of health status outcomes. In the controlled environment of the reliability and validity testing of these items where data accuracy is verified, these items correlated well with other items that track functional status. In other words, patients judged to have low rehabilitation potential tend to show less change in health status between two points in time. If these items retain their predictive power through the demonstration and are retained in later versions of the OASIS, they will be useful items for ''sorting'' performance or analysis and for searching for opportunities for improvement. For example, if an HHA reports many patients with high rehabilitation potential, but functional status measures of these patients (risk-adjusted) show poorer results than other high rehabilitation potential patients in other HHAs, an opportunity to improve is presented to the HHA. We want to emphasize that this item adds little or no new burden, since HHAs routinely use assessment items similar to, or the same as, this item.

- Current Residence

We have included this item because it is closely related to the sustainability of an individual in community-based care and, possibly, institutional services. For example, a frail person who is able to live successfully in the home of a family member may not be able to do so if the same person were living alone in a rented room. The performance of the HHA in relationship to such variables as type of residence can make the difference between staying out of a nursing home and getting in to a nursing home. Having this information in the system enables the HHA (and HCFA) to measure patient success in relationship to residence.

- Supportive Assistance

The items in this section are intended to sort out and distinguish among the various types of caregiving that family and others provide, and with what frequency. As these items continue to be analyzed for utility and predictive power during the demonstration, they may be consolidated or shortened. Their importance, though, relates directly to the balance that should be achieved between the service the HHA provides and the help family and others provide to ensure the patient has the best chance to remain at home for as long as possible and to improve as much as possible.

To measure outcomes, OASIS data are collected at uniformly defined time points: start of care, every 57 to 62 days until and including discharge, and within 48 hours after return to home from a hospital admission for any reason other than diagnostic testing. We are using a time frame of 57 to 62 days to provide the HHA flexibility, and to ensure that the reassessment will be completed in time for the 62-day patient recertification. We are requiring that the OASIS be administered within 48 hours of the patient's return from a hospital admission (except when the hospital admission was for diagnostic tests) because we believe hospital admissions are predictive of likely changes in patient status and, therefore, important to capture for care planning and quality assessment and performance purposes.

When HCFA asks HHAs to report OASIS data, some information about the patient at the time of admission to a hospital may be included and, if so, would be related to reasons for the admission to the hospital. If home health care is resumed after the hospital admission and regardless of whether the patient was formally discharged from the HHA, the standard start-of-care OASIS is completed, with supplemental information on the length of hospital stay. Under these circumstances, if the patient was not formally discharged, followup data collection continues at 57 to 62 day intervals in accord with the original start-of-care date. If the patient was formally discharged from the HHA, the data collection proceeds on the basis of the new start-of-care date that followed the inpatient stay.

Some data items are unique to only one time point (for example, discharge information is only collected at patient discharge), while other data are collected at every time point. By collecting data using uniform data items and time points, individual patient data are comparable. The data can be aggregated to form agency-level outcomes and to be used for comparisons to a larger reference group of agencies. As a result, uniformity of data items and times points allows us to compare ''apples to apples.'' Again, this is why we are requiring as a condition of participation that the HHA use the OASIS exactly as specified by the Secretary. The most current version of the OASIS is published in this proposed rule. It reflects minor adjustments to various items that further testing in the field has shown to increase the precision and utility of the OASIS. This version does not change the workload associated with its use and there is some indication it requires less administration time than the earlier version. We urge that agencies currently using various versions of the OASIS, including ''partial'' versions, now focus on the use of the version of the OASIS contained in this proposed notice.

As health care delivery is constantly evolving, so will the OASIS continue to evolve. Although the data set has undergone extensive testing to date, it will be necessary to test and refine the data set on an ongoing basis. Further reliability and validity testing is occurring in the context of the national demonstration noted above. As experience is gained and as home care continues to change, so too must the OASIS. Modifications in items on the OASIS or the addition or deletion of data items from the OASIS as a result of additional testing will be released to HHAs periodically in manual updates, so that HHAs will make the necessary modifications and the OASIS can continue to represent the best data set for home health care outcome measurement.

C. Expectations Regarding the Use of the OASIS

We plan to implement full use of the OASIS in stages. The first step, which will begin when these proposed regulations are published as a final rule, is to require that all HHAs incorporate the exact use of the OASIS into their current comprehensive assessment process. This requirement will help to organize the assessment process around a set of agreed-upon, valid and reliable health status items that are known to be of value in measuring quality outcomes for patients. After HHAs have begun to use the OASIS as specified by the final rule, we intend to publish another proposed rule that would require HHAs to report OASIS data electronically into a national database. We believe this step will bring the use of the OASIS to its full potential as described in section I.C.2. ''The Longer Run Use of the OASIS'' of this preamble.

1. The Near Future

The comprehensive needs of home health patients are currently determined in a wide variety of ways, using numerous assessment tools. The utility and effectiveness of the many ways of completing a comprehensive assessment also vary widely, from highly sophisticated systems to little more than general notes on the plan of care submitted for payment. The first critically important advantage of requiring HHAS to incorporate the exact use of the OASIS within their current approach to a comprehensive assessment process is that it helps to organize the assessment process around

a set of agreed-upon, valid, and reliable health status items that are known to be of value in measuring quality outcomes for patients.

The ease with which the items on the OASIS can be assimilated into a comprehensive assessment process is apparent because all the items must be accounted for in any effective, relevant, comprehensive assessment. Hence, the information that is derived from the OASIS is useful and essential to assessment and care planning, and to internal performance improvement efforts. This fact is central to the rationale for asking that each HHA use the OASIS exactly as specified as part of its comprehensive assessment when the new home health conditions of participation become effective. (Recall that the OASIS items can be rearranged and distributed throughout an HHA's comprehensive assessment, as long as the items are used exactly as written.)

Once the OASIS has been administered as part of the comprehensive assessment, the results help to organize care planning with greater precision than is currently possible, especially in HHAs that lack a carefully structured approach to comprehensive assessment. The increased specificity in patient assessment (in critical areas of health and functional status) will assist agency staff to uniquely tailor a treatment plan to each individual patient.

Once the assessment and care planning process has been completed, and the provision of services has commenced for a specific patient, the OASIS is readministered on a periodic basis. Since OASIS items have been shown to be valid and reliable indicators of several dimensions of health status, the results of accurately administering the OASIS provide an effective measure of progress over time. As such, the OASIS can contribute significant information that helps in reassessing patient status, guiding changes in the plan of care, and developing approaches to solving care problems.

In the day-to-day effort to competently deliver effective services to a wide variety of patients with a panoply of needs, the HHA can easily lose sight of the ''big picture'' or how the agency is performing overall from the standpoint of effectiveness, efficiency, and patient satisfaction. We would require HHAs to begin to use the OASIS before final implementation of our request for HHAs to report OASIS data that can be aggregated in a national database and fed back to each HHA for use in its quality assessment and performance improvement program. In fact, each HHA can collect and use OASIS data on its own to compare the outcomes of similar patients to each other and to compare its performance from one year to the next.

To implement OASIS data collection as part of the quality assessment and performance improvement process, a HHA would ideally proceed with three steps, all of which should occur under the leadership of a team whose focus is to modify current assessment forms and documentation. Because most HHAs are accustomed to revising patient assessment instruments periodically as new clinical protocols become known or as new requirements by accrediting bodies or regulators are implemented, formation of teams or task forces often occurs at the agency level. Clinical supervisors or managers, staff members of various disciplines, and clerical staff are usually included on such teams.

First, the team would review current clinical documentation, comparing assessment items with similar OASIS data items. In some cases (for example, start-of-care date, gender, date of birth, Medicare number), minimal or no change to the current data item is needed. In other situations (for example, dyspnea scale, bathing scale) the precision of the OASIS item requires the HHA to substitute the OASIS item for its current documentation. Next, the documentation team would determine whether to adapt its current form, using a cut-and-paste approach or to develop an entirely new form. Finally, the team would take action. If the team chooses to develop a new form, sample clinical forms are available from several sources to facilitate this development, since this form is usually the most detailed document used by the HHA. HHA documentation for recertification and discharge assessments seldom are standardized, so these forms typically are developed anew rather than modified. Once the forms are developed, the implementation team oversees their pilot testing, modification, finalization, and printing.

Any change in HHA forms, paper flow, and related activities requires staff training to implement. The extent of the changes will affect the amount of training required. Nearly all HHAs make some modification to existing paperwork or internal procedures on approximately an annual basis for reasons such as modifying forms, internal paper flow, or current data entry processes. Consequently, the HHAs are familiar with training staff to accomplish this task. In addition, staff inservice, orientation, and training are routine parts of ongoing HHA activities for both clinical and clerical personnel.

HHAs should also plan for two types of data accuracy checks. The first check is for completeness of data; that is, whether all OASIS items have been completed. This check can be done through a visual check of clinical documentation submitted for data entry or through a programmed data entry check. Other data accuracy checks can be incorporated into a data entry program to examine logical inconsistencies in the documentation (for example, a bedbound patient who is independent in housekeeping, a patient with no pressure ulcers whose pressure ulcers are not healing).

Software is becoming available from vendors and other sources for this purpose. Clinical supervisory personnel are often alerted to incomplete or logically inconsistent documentation, similar to what occurs for HCFA–485 data which is the routine Medicare billing form.

To facilitate internal agency performance improvement activities, it currently is possible for HHAs to create outcome reports for their own patient populations using informal methods. Guidance in doing this is provided in the aforementioned manual published by the National Association for Home Care. For small HHAs or larger HHAs over a shorter time interval, producing preliminary reports of this nature requires only a paper-and-pencil data entry approach and a calculator. However, we encourage computerization as soon as it is possible to do so. The nearly universal move toward electronic information systems, including the health care industry for areas such as billing and payment, suggests that the sooner organizations learn how to use electronic information systems for patient care and quality assessment and performance improvement, the better positioned they will be to respond when HCFA proposes to require electronic reporting of OASIS data in the future.

If the HHA can be part of a reference database group or project, participate in a reference data consortium, or is part of a multiprovider company, such data can be collected and used as a comparison database to assess performance among HHAs in the group, and to search for opportunities that could contribute to improved outcomes and satisfaction for patients. In this case, an individual HHA will be considered relative to all HHAs in the group or database in terms of the extent to which various outcome measures are indicative of high or low quality of care relative to the standard represented by the mean for all HHAs. Case-mix adjustment is necessary for outcome

comparisons across agencies or groups. The OASIS contains tested and reliable data items that can be used for risk factor adjustment.

For example, an HHA generates an outcome report based on OASIS data that indicates that 30 percent of all of the HHA's patients had improved in ability to manage oral medications, compared with 45 percent of its patients from the previous time period. The HHA is concerned about this decline in this outcome because a patient's ability to manage oral medications is often critical to managing his or her medical condition at home. An investigation into care processes reveals that several of the HHA's care providers are not adequately assessing fine motor ability and thus not addressing possible deficits in fine motor skills when planning care. For a number of patients, this appears to be resulting in inadequate assessment of the need for occupational therapy involvement and teaching medication management. The HHA develops a plan of action to improve care by incorporating a more detailed fine motor evaluation into its comprehensive assessment at the start of care, integrating findings from that evaluation into the medication teaching guide, and enhancing nurse-occupational therapy coordination with interdisciplinary care conferences on patients with impaired fine motor function. The HHA's outcome report for the following time period shows that 48 percent of discharged patients improved in ability to manage oral medications. Thus, changes in care processes resulting from an analysis of outcome findings subsequently have a positive impact on patient outcomes.

While we recognize that some HHAs already are using fairly sophisticated computer systems to collect and manage clinical as well as financial data, we realize that many HHAs have not begun, or are just beginning, to utilize electronic means of managing clinical and programmatic information. We believe the contributions the OASIS can make to the assessment, care planning, and implementation of performance improvement activities will stimulate more HHAs to move to an electronic format for managing patient clinical information. In fact, we do not envision how an HHA can successfully move to a continuous quality improvement approach without developing and using a computer-based system to manage and use organizational and patient-based data. In this regard, the OASIS will help guide the multiple clinical record systems and electronic management information systems under development at the present time, providing a foundation for uniformity and precision in assessment, care planning, and outcome monitoring. When we publish these requirements as a final rule, we are committed to sharing data system specifications for the OASIS with the HHA community.

A number of vendors have developed and are marketing various types of software, including electronic clinical recordkeeping, to the home care industry. We encourage such development because as information technology continues to improve, it will increase the efficiency with which the requisite information can be collected for home health care administration, billing, assessment, and outcome monitoring. Incorporating OASIS into electronic clinical records, including the capability to adapt software to modest revisions of the OASIS periodically is both a challenge and an opportunity. It is a challenge because changes have to be made to current electronic clinical record systems, replacing analogous items so that the total length of the start-of-care assessment process for agencies is no greater (or only marginally greater) in terms of time expended by the care providers. Such changes will be reasonably straightforward for some vendors and complex for others.

In many ways, the opportunities for software vendors serve to offset the challenges because as we move toward national use of the OASIS data set and subsequent updates as the OASIS evolves (as explained in section I.C.2. of this preamble) nearly all HHAs will require some type of software system. Such a system, at a minimum, will be needed to perform initial computerization, those editing functions necessary to ensure accurate OASIS and file development so that OASIS data can be submitted to a central location for Medicare system processing. Software conversion and marketing processes will, of course, naturally accompany the increased demand for electronic clinical recordkeeping in the home health care field. In all, we expect there will be substantial opportunities to expand software applications over the next few years.

We are also aware that some companies already exist that provide both software management of assessment and other data as well as data analysis and management services for quality improvement. We believe the implementation of the proposed HHA conditions of participation, published elsewhere in this issue of the Federal Register, which focus on quality assessment and performance improvement, and this proposed rule, which introduces the OASIS to the process, will only expand the opportunities for quality management firms to flourish. While many HHAs already have sophisticated quality improvement management programs, we know a significant number do not. Since we encourage maximum flexibility and creativity in these programs, we believe the requirement that HHAs use the OASIS in no way inhibits these companies from marketing their quality management services.

We are considering the possibility of using the OASIS in our monitoring of managed care organizations in the future. For example, if the OASIS were used, HCFA, HHAs, and managed care organizations would be able to evaluate overall effectiveness of managed care home care and make decisions and improvements based on beneficiary outcomes.

Another advantage of implementing the OASIS as part of the comprehensive assessment at the time the new conditions of participation become effective is that it provides HHAs with time to learn how to use the OASIS effectively and accurately. HHAs can begin to experiment with using OASIS data. This provides opportunities to focus on specific areas for enhancing outcomes of care, patient satisfaction, and organizational efficiencies. Such a learning period would take place prior to HCFA implementing additional rule making that would require HHAs to provide OASIS data electronically to a national database.

2. The Longer Run Use of the OASIS

For informational purposes, we are discussing our long-range goals for the use of the OASIS. While this proposed rule would not require HHAs to report OASIS data to a national database, we intend to publish such a rule when the system is developed. A national database would allow HCFA to make these data available in the form of standardized, risk-adjusted outcome reports. Aggregate OASIS-derived HHA outcome reports that contain no patient-specific data will be in the public domain, and consumers, purchasers, HHAs, and HCFA will be able to use such information in a variety of ways. Additionally, HCFA as a purchaser of managed care services is interested in the quality oversight of home health services delivered by managed care organizations.

When outcome reports become available, each HHA will be able to use the outcome reports in its quality assessment and performance improvement program. The HHA will be able to examine specific care domains,

types of patients, or both and to compare present performance to past performance and national performance norms. For example, the HHA could compare its performance with other HHAs, locally, regionally, and nationally. When these quality indicators are implemented and evaluated, agency profiles could be used in the survey process to compare the HHA's results with past performance. Objective data of this nature can be an important validator of the HHA's improvement efforts and also serve as a flag to the agency in terms of where to focus its quality improvement priorities. The data will allow the HHA to focus its quality improvement resources more efficiently by concentrating on specific outcomes that require attention rather than investing in systematic improvements in a broad range of areas that might presently be satisfactory or even superior relative to other agencies throughout the country. The ability of the HHA to efficiently and effectively improve its individual performance would have the cumulative result of the industry improving services to Medicare and Medicaid beneficiaries at the same or lower cost. It may also further justify and highlight the strengths of home care, thereby enhancing access for other types of patients in the longer run.

An individual HHA can use the outcome reports to evaluate the effectiveness of care provided to specific types of patients and, in the context of investigating processes of care, to individual patients. In order to investigate outcomes that might be judged inadequate by agency staff, an individual patient's clinical records can be reviewed in the context of a process-of-care screen that investigates the circumstances and processes leading to outcomes. Such an investigation can, in turn, lead to a plan of action that focuses on specific changes in care behaviors at the individual patient level. This enables an HHA to identify and apply ''lessons learned'' to its agency operations to improve the outcomes of the agency as a whole. Analogously, the HHA can examine circumstances and processes that produced superior or exemplary outcomes to reinforce care behaviors that produce such outcomes, promulgating information on such care behaviors within the agency.

Data from outcome reports not only can be used by the HHA for continuous quality improvement by monitoring outcomes over time, but also can be used to objectively assess the agency's strengths and weaknesses in the clinical services it provides. Outcome reports can inform the HHA what patients and clinical conditions it best serves, what areas of HHA-care behaviors or activities correlate with patient satisfaction, and what services need improvement. Such information will be of value to the HHA in its strategic planning, financial planning, and marketing.

Aggregate HHA outcome reports that contain no patient-specific data may be used by the industry for comparative performance assessment. The home care industry can identify those agencies regarded as industry leaders in quality of care for comparable services, care domains, and/or patient populations. Identified quality leaders can market their services accordingly and can serve as a reservoir of expertise for other agencies in their efforts to improve performance in selected areas.

The results of outcome measurement also can provide useful information to purchasers and consumers of home care services. Such organizations and individuals will be able to examine reports of industry outcomes and identify those agencies that will best provide the services to meet the needs of individual consumers or the population needs of particular purchasers. Improved access to objective information on quality of care for consumers and purchasers will also drive quality improvement in the industry as a whole. HHAs with records of poor performance will be motivated to improve their performances to compete with better-performing HHAs.

Our managed care partners, as purchasers of home health services, would also be interested in such outcome-based comparative performance measurements of HHAs. A standardized industry-wide instrument would allow plans as purchasers to make value-based purchasing decisions of home health care. The ability to use outcome measurement data is especially important to us as a purchaser of services on behalf of eligible beneficiaries. For example, in addition to comparing an HHA's performance to its own past performance, HCFA and State survey agencies will be able to use industry-wide performance data on a continuous basis to identify HHAs that are not performing to the norm, thereby suggesting the possibility that poor quality of care is occurring. This information can trigger on-site inspections to assess performance. At the same time, the data can be used to look for patterns of exemplary performance that can be shared with others to help improve outcomes of care and satisfaction overall. Having these data on a flow basis frees us up from rigid survey schedules and enables us to use scarce inspection resources more productively. Of course, we would still conduct initial inspections to ensure an HHA is ready for participation. We would also follow up, usually with an on-site visit, on all complaints that suggest quality of care problems. Additionally, State survey agencies and HCFA could use performance data to identify opportunities for improvement in national or local priority areas, such as a project to improve medication management for beneficiaries generally, or to shorten the time necessary to achieve a clinically important patient outcome.

The availability of performance data will also enable State survey agencies and HCFA to evaluate more effectively the HHA's performance of its own quality assessment and performance improvement program. For example, an HHA is receiving objective feedback data that show that the HHA is performing less well than other HHAs in a particular clinical outcome area. The HHA is not using the quality assessment and performance improvement program to address why its results are divergent and to develop interventions to improve its performance. Consequently, the surveyors will have evidence that the HHA is not responding the way it could or should to improve outcomes of care and satisfaction for patients.

Initially, since we are not yet requiring HHAs to submit OASIS data, surveyors will look at how the HHA has used OASIS data internally, and ideally, informally with other HHAs (for example, either within its own company, or through consortia of HHAs in its geographic area). Likewise, accreditation organizations with deemed status can use the information as part of their accreditation processes. As we stated earlier in this preamble, the Department of Health and Human Services will, at a later date, issue a separate notice of proposed rulemaking identifying the specific data elements that would be required to be reported to HCFA, the timetable, and the intended use of these data elements. At this time, it has not been determined how extensive or limited these requirements will be. There will be extensive public comment when the draft is issued. In the meantime, however, we welcome public comment on the question of what would constitute appropriate reporting requirements for the purposes of monitoring progress toward meeting performance outcome measures.

3. Other Potential Applications of OASIS Data

We are presently investigating the potential of the OASIS and information on which clinical outcomes are based to

assist in developing selected features of a Medicare prospective payment system for home health services. Specifically, we have found that in identifying factors that might be valuable in developing case-mix adjustors for payment purposes, traditional characteristics such as patient diagnosis account for little of the variation in home health utilization. Our Office of Research and Demonstrations is currently researching home health case-mix, including an investigation of the use and applicability of the data items contained within the OASIS for developing a home health case-mix adjustor for payment purposes. If such data items are found to be a valid basis for home health case-mix, the potential of the OASIS would be further maximized. At the same time, the burden on HHAs in providing health status information for purposes of measuring outcomes, assessing patient needs, care planning, and measuring case mix would be minimized.

We believe the OASIS data have the potential to be of significant benefit to health professionals and professional organizations. Objective, well-specified data on home health outcomes can assist professionals to determine those practice areas needing improvement, and help to identify inefficient or ineffective practice standards or services which do not contribute to improved patient outcomes. Thus, the OASIS data can inform and improve professional practice standards and ultimately assist in the development of clinical practice guidelines and critical pathways. On a broader scale, we are interested in developing a capability of linking beneficiary information across provider settings with other administrative data (for example, payment and utilization data). Beneficiaries may have very complex service delivery histories, moving among various services and benefits.

In order to effectively track outcomes and to facilitate the administrative tasks involved in integrating the care for individuals, our data systems, including the OASIS, minimum data set (MDS), and others that may emerge, must be able to be integrated. Since mandated data sets have been implemented or are being considered in other domains of health care for which HCFA is responsible (for example, the MDS for nursing homes, and the Uniform Needs Assessment instrument for hospital discharge), we anticipate the evolution of data items and data sets to occur so that the degree of commonality among such data sets can be maximized over the course of time. Data sets have been developed for selected fields such as home care and nursing home care so that the unique needs of patient and Medicare beneficiaries that pertain to each provider type can be adequately taken into consideration in the context of an initial data set such as OASIS or MDS. Because of these unique needs, it is unlikely that we can collectively attain perfect overlap among the different data sets. It is our goal ultimately to attain as much commonality across these data sets as possible so that patient health status might eventually be monitored across provider settings using a core set of data items within each data set.

Finally, we expect that the OASIS data will help us in promoting more efficient regulations and policies that encourage good performance in the home care industry. We will be able to objectively examine the home health industry in all its complexity, using outcome data to support or refute anecdotal information, unsubstantiated opinion, or conjecture, thereby facilitating consensus building and more objective policy decisions. Most important, home health outcomes information will aid in shaping and even creating the home health benefit of the future. As we identify those practices and services that contribute to enhanced patient outcomes, the patient populations that should be served by home care can be better specified, and the capacity of the home health industry to provide the requisite services can be strengthened, expanded, or refined in keeping with beneficiary outcomes.

II. Sample OASIS Survey

BILLING CODE 4120–01–P

Medicare Home Health Care Quality Assurance and Improvement Demonstration Outcome and Assessment Information Set (OASIS-B)

This data set should not be reviewed or used without first reading the accompanying narrative prologue that explains the purpose of the OASIS and its past and planned evolution.

OASIS Items to be Used at Specific Time Points

Start of Care (or Resumption of Care Following Inpatient Facility Stay): 1-69

Follow-Up: 1, 4, 9-11, 13, 16-26, 29-71

Discharge (not to inpatient facility): 1, 4, 9-11, 13, 16-26, 29-74, 78-79

Transfer to Inpatient Facility (with or without agency discharge): 1, 70-72, 75-79

Death at Home: 1, 79

Note: For items 51-67, please note special instructions at the beginning of the section.

CLINICAL RECORD ITEMS

a. Agency ID: _ _ _ _ _ _ _ _ _ _

b. Patient ID Number: _____

c. Start of Care Date: _ _/_ _/_ _ _ _
month day year

d. Patient's Last Name:

_ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _

e. Patient State of Residence: _ _

f. Patient Zip Code: _ _ _ _ _

g. Medicare Number:

_ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _
(including suffix if any)

☐ NA - No Medicare

h. Birth Date: _ _/_ _/_ _ _ _
month day year

i. Discipline of Person Completing Assessment:

☐ 1-RN ☐ 2-LPN ☐ 3-PT
☐ 4-SLP/ST ☐ 5-OT ☐ 6-MSW

j. Date Assessment Information Recorded:

_ _/_ _/_ _ _ _
month day year

DEMOGRAPHICS AND PATIENT HISTORY

1. **This Assessment is Currently Being Completed for the Following Reason:**

   ☐ 1 - Start of care
   ☐ 2 - Resumption of care (after inpatient stay)
   ☐ 3 - Discharge from agency - not to an inpatient facility **[Go to *Question 4*]**
   ☐ 4 - Transferred to an inpatient facility - discharged from agency **[Go to *Question 70*]**
   ☐ 5 - Transferred to an inpatient facility - not discharged from agency **[Go to *Question 70*]**
   ☐ 6 - Died at home **[Go to *Question 79*]**
   ☐ 7 - Recertification reassessment (follow-up) **[Go to *Question 4*]**
   ☐ 8 - Other follow-up **[Go to *Question 4*]**

2. **Gender:**

   ☐ 1 - Male
   ☐ 2 - Female

3. **Race/Ethnicity** (as identified by patient):

   ☐ 1 - White, non-Hispanic
   ☐ 2 - Black, African-American
   ☐ 3 - Hispanic
   ☐ 4 - Asian, Pacific Islander
   ☐ 5 - American Indian, Eskimo, Aleut
   ☐ 6 - Other
   ☐ UK - Unknown

4. **Current Payment Sources for Home Care: (Mark all that apply.)**

   ☐ 0 - None; no charge for current services
   ☐ 1 - Medicare (traditional fee-for-service)
   ☐ 2 - Medicare (HMO/managed care)
   ☐ 3 - Medicaid (traditional fee-for-service)
   ☐ 4 - Medicaid (HMO/managed care)
   ☐ 5 - Workers' compensation
   ☐ 6 - Title programs (e.g., Title III, V, or XX)
   ☐ 7 - Other government (e.g., CHAMPUS, VA, etc.)
   ☐ 8 - Private insurance
   ☐ 9 - Private HMO/managed care
   ☐ 10 - Self-pay
   ☐ 11 - Other (specify) _____
   ☐ UK - Unknown

5. **Financial Factors** limiting the ability of the patient/family to meet basic health needs: **(Mark all that apply.)**

   ☐ 0 - None
   ☐ 1 - Unable to afford medicine or medical supplies
   ☐ 2 - Unable to afford medical expenses that are not covered by insurance/Medicare (e.g., copayments)
   ☐ 3 - Unable to afford rent/utility bills
   ☐ 4 - Unable to afford food
   ☐ 5 - Other (specify) _____

6. From which of the following **Inpatient Facilities** was the patient discharged during the past 14 days? **(Mark all that apply.)**

   ☐ 1 - Hospital
   ☐ 2 - Rehabilitation facility
   ☐ 3 - Nursing home
   ☐ 4 - Other (specify) _____
   ☐ NA - Patient was not discharged from an inpatient facility **[If NA, go to *Question 9*]**

7. **Inpatient Discharge Date** (most recent):

   __ __ / __ __ / __ __ __ __
   month day year

   ☐ UK - Unknown

8. **Inpatient Diagnoses** and three-digit ICD code categories for only those conditions treated during an inpatient facility stay within the last 14 days (no surgical or V-codes):

Inpatient Facility Diagnosis	7ICD
a. _____	(__ __ __)
b. _____	(__ __ __)

9. **Medical or Treatment Regimen Change Within Past 14 Days:** Has this patient experienced a change in medical or treatment regimen (e.g., medication, treatment, or service change due to new or additional diagnosis, etc.) within the last 14 days?

   ☐ 0 - No **[If No, go to *Question 11*]**
   ☐ 1 - Yes

10. List the patient's **Medical Diagnoses** and three-digit ICD code categories for those conditions requiring changed medical or treatment regimen (no surgical or V-codes):

Changed Medical Regimen Diagnosis	ICD
a. _____	(__ __ __)
b. _____	(__ __ __)
c. _____	(__ __ __)
d. _____	(__ __ __)

11. **Conditions Prior to Medical or Treatment Regimen Change or Inpatient Stay Within Past 14 Days:** If this patient experienced an inpatient facility discharge or change in medical or treatment regimen within the past 14 days, indicate any conditions which existed prior to the inpatient stay or change in medical or treatment regimen **(Mark all that apply.)**

- ☐ 1 - Urinary incontinence
- ☐ 2 - Indwelling/suprapubic catheter
- ☐ 3 - Intractable pain
- ☐ 4 - Impaired decision-making
- ☐ 5 - Disruptive or socially inappropriate behavior
- ☐ 6 - Memory loss to the extent that supervision required
- ☐ 7 - None of the above
- ☐ NA - No inpatient facility discharge and no change in medical or treatment regimen in past 14 days
- ☐ UK - Unknown

12. **Diagnoses and Severity Index:** List each medical diagnosis or problem for which the patient is receiving home care and ICD code category (no surgical or V-codes) and rate them using the following severity index. (Choose one value that represents the most severe rating appropriate for each diagnosis.)

0 - Asymptomatic, no treatment needed at this time
1 - Symptoms well controlled with current therapy
2 - Symptoms controlled with difficulty, affecting daily functioning; patient needs ongoing monitoring
3 - Symptoms poorly controlled, patient needs frequent adjustment in treatment and dose monitoring
4 - Symptoms poorly controlled, history of rehospitalizations

Primary Diagnosis	ICD	Severity Rating
a. _____	(__ __ __)	☐ 0 ☐ 1 ☐ 2 ☐ 3 ☐ 4

Other Diagnoses	ICD	Severity Rating
b. _____	(__ __ __)	☐ 0 ☐ 1 ☐ 2 ☐ 3 ☐ 4
c. _____	(__ __ __)	☐ 0 ☐ 1 ☐ 2 ☐ 3 ☐ 4
d. _____	(__ __ __)	☐ 0 ☐ 1 ☐ 2 ☐ 3 ☐ 4
e. _____	(__ __ __)	☐ 0 ☐ 1 ☐ 2 ☐ 3 ☐ 4
f. _____	(__ __ __)	☐ 0 ☐ 1 ☐ 2 ☐ 3 ☐ 4

13. **Therapies** the patient receives at home: **(Mark all that apply.)**

- ☐ 1 - Intravenous or infusion therapy (excludes TPN)
- ☐ 2 - Parenteral nutrition (TPN or lipids)
- ☐ 3 - Enteral nutrition (nasogastric, gastrostomy, jejunostomy, or any other artificial entry into the alimentary canal)
- ☐ 4 - None of the above

14. **Overall Prognosis:** BEST description of patient's overall prognosis for recovery from this episode of illness.

- ☐ 0 - Poor: little or no recovery is expected and/or further decline is imminent
- ☐ 1 - Good/Fair: partial to full recovery is expected
- ☐ UK - Unknown

15. **Rehabilitative Prognosis:** BEST description of patient's prognosis for functional status.

- ☐ 0 - Guarded: minimal improvement in functional status is expected; decline is possible
- ☐ 1 - Good: marked improvement in functional status is expected
- ☐ UK - Unknown

16. **Life Expectancy:** (Physician documentation is not required.)

- ☐ 0 - Life expectancy is greater than 6 months
- ☐ 1 - Life expectancy is 6 months or fewer

17. **High Risk Factors** characterizing this patient: **(Mark all that apply.)**

- ☐ 1 - Heavy smoking
- ☐ 2 - Obesity
- ☐ 3 - Alcohol dependency
- ☐ 4 - Drug dependency
- ☐ 5 - None of the above
- ☐ UK - Unknown

LIVING ARRANGEMENTS

18. **Current Residence:**

- ☐ 1 - Patient's owned or rented residence (house, apartment, or mobile home owned or rented by patient/couple/significant other)
- ☐ 2 - Family member's residence
- ☐ 3 - Boarding home or rented room
- ☐ 4 - Board and care or assisted living facility
- ☐ 5 - Other (specify) _____

19. **Structural Barriers** in the patient's environment limiting independent mobility: **(Mark all that apply.)**

- ☐ 0 - None
- ☐ 1 - Stairs inside home which must be used by the patient (e.g., to get to toileting, sleeping, eating areas)
- ☐ 2 - Stairs inside home which are used optionally (e.g., to get to laundry facilities)
- ☐ 3 - Stairs leading from inside house to outside
- ☐ 4 - Narrow or obstructed doorways

20. **Safety Hazards** found in the patient's current place of residence: **(Mark all that apply.)**

- ☐ 0 - None
- ☐ 1 - Inadequate floor, roof, or windows
- ☐ 2 - Inadequate lighting
- ☐ 3 - Unsafe gas/electric appliance
- ☐ 4 - Inadequate heating
- ☐ 5 - Inadequate cooling
- ☐ 6 - Lack of fire safety devices
- ☐ 7 - Unsafe floor coverings
- ☐ 8 - Inadequate stair railings
- ☐ 9 - Improperly stored hazardous materials
- ☐ 10 - Lead-based paint
- ☐ 11 - Other (specify) _____

21. **Sanitation Hazards** found in the patient's current place of residence: **(Mark all that apply.)**

- ☐ 0 - None
- ☐ 1 - No running water
- ☐ 2 - Contaminated water
- ☐ 3 - No toileting facilities
- ☐ 4 - Outdoor toileting facilities only
- ☐ 5 - Inadequate sewage disposal
- ☐ 6 - Inadequate/improper food storage
- ☐ 7 - No food refrigeration
- ☐ 8 - No cooking facilities
- ☐ 9 - Insects/rodents present
- ☐ 10 - No scheduled trash pickup
- ☐ 11 - Cluttered/soiled living area
- ☐ 12 - Other (specify) _____

22. **Patient Lives With: (Mark all that apply.)**

- ☐ 1 - Lives alone
- ☐ 2 - With spouse or significant other
- ☐ 3 - With other family member
- ☐ 4 - With a friend
- ☐ 5 - With paid help (other than home care agency staff)
- ☐ 6 - With other than above

SUPPORTIVE ASSISTANCE

23. **Assisting Person(s) Other than Home Care Agency Staff: (Mark all that apply.)**

- ☐ 1 - Relatives, friends, or neighbors living outside the home
- ☐ 2 - Person residing in the home (EXCLUDING paid help)
- ☐ 3 - Paid help
- ☐ 4 - None of the above **[If None of the above, go to *Question 27*]**
- ☐ UK - Unknown **[If Unknown, go to *Question 27*]**

24. **Primary Caregiver** taking lead responsibility for providing or managing the patient's care, providing the most frequent assistance, etc. (other than home care agency staff):

- ☐ 0 - No one person **[If No one person, go to *Question 27*]**
- ☐ 1 - Spouse or significant other
- ☐ 2 - Daughter or son
- ☐ 3 - Other family member
- ☐ 4 - Friend or neighbor or community or church member
- ☐ 5 - Paid help
- ☐ UK - Unknown **[If Unknown, go to *Question 27*]**

25. **How Often** does the patient receive assistance from the primary caregiver?

- ☐ 1 - Several times during day and night
- ☐ 2 - Several times during day
- ☐ 3 - Once daily
- ☐ 4 - Three or more times per week
- ☐ 5 - One to two times per week
- ☐ 6 - Less often than weekly
- ☐ UK - Unknown

26. **Type of Primary Caregiver Assistance: (Mark all that apply.)**

- ☐ 1 - ADL assistance (e.g., bathing, dressing, toileting, bowel/bladder, eating/feeding)
- ☐ 2 - IADL assistance (e.g., meds, meals, housekeeping, laundry, telephone, shopping, finances)
- ☐ 3 - Environmental support (housing, home maintenance)
- ☐ 4 - Psychosocial support (socialization, companionship, recreation)
- ☐ 5 - Advocates or facilitates patient's participation in appropriate medical care
- ☐ 6 - Financial agent, power of attorney, or conservator of finance
- ☐ 7 - Health care agent, conservator of person, or medical power of attorney
- ☐ UK - Unknown

SENSORY STATUS

27. **Vision** with corrective lenses if the patient usually wears them:

- ☐ 0 - Normal vision: sees adequately in most situations; can see medication labels, newsprint.
- ☐ 1 - Partially impaired: cannot see medication labels or newsprint, but can see obstacles in path, and the surrounding layout; can count fingers at arm's length.
- ☐ 2 - Severely impaired: cannot locate objects without hearing or touching them or patient nonresponsive.

28. **Hearing and Ability to Understand Spoken Language** in patient's own language (with hearing aids if the patient usually uses them):

- ☐ 0 - No observable impairment. Able to hear and understand complex or detailed instructions and extended or abstract conversation.
- ☐ 1 - With minimal difficulty, able to hear and understand most multi-step instructions and ordinary conversation. May need occasional repetition, extra time, or louder voice.
- ☐ 2 - Has moderate difficulty hearing and understanding simple, one-step instructions and brief conversation; needs frequent prompting or assistance.
- ☐ 3 - Has severe difficulty hearing and understanding simple greetings and short comments. Requires multiple repetitions, restatements, demonstrations, additional time.
- ☐ 4 - Unable to hear and understand familiar words or common expressions consistently, or patient nonresponsive.

29. **Speech and Oral (Verbal) Expression of Language** (in patient's own language):

- ☐ 0 - Expresses complex ideas, feelings, and needs clearly, completely, and easily in all situations with no observable impairment.
- ☐ 1 - Minimal difficulty in expressing ideas and needs (may take extra time; makes occasional errors in word choice, grammar or speech intelligibility; needs minimal prompting or assistance).
- ☐ 2 - Expresses simple ideas or needs with moderate difficulty (needs prompting or assistance, errors in word choice, organization or speech intelligibility). Speaks in phrases or short sentences.
- ☐ 3 - Has severe difficulty expressing basic ideas or needs and requires maximal assistance or guessing by listener. Speech limited to single words or short phrases.
- ☐ 4 - Unable to express basic needs even with maximal prompting or assistance but is not comatose or unresponsive (e.g., speech is nonsensical or unintelligible).
- ☐ 5 - Patient nonresponsive or unable to speak.

30. **Frequency of Pain** interfering with patient's activity or movement:

- ☐ 0 - Patient has no pain or pain does not interfere with activity or movement
- ☐ 1 - Less often than daily
- ☐ 2 - Daily, but not constantly
- ☐ 3 - All of the time

31. **Intractable Pain:** Is the patient experiencing pain that is not easily relieved, occurs at least daily, and affects the patient's sleep, appetite, physical or emotional energy, concentration, personal relationships, emotions, or ability or desire to perform physical activity?

☐ 0 - No
☐ 1 - Yes

INTEGUMENTARY STATUS

32. Does this patient have a **Skin Lesion** or an **Open Wound**? This excludes "OSTOMIES."

☐ 0 - No **[If No, go to *Question 36*]**
☐ 1 - Yes

33. Does this patient have a **Pressure Ulcer**?

☐ 0 - No **[If No, go to *Question 34*]**
☐ 1 - Yes

33a. Current Number of Pressure Ulcers at Each Stage: (Circle one response for each stage.)

Pressure Ulcer Stages	Number of Pressure Ulcers				
a) Stage 1: Nonblanchable erythema of intact skin; the heralding of skin ulceration. In darker-pigmented skin, warmth, edema, hardness, or discolored skin may be indicators.	0	1	2	3	4 or more
b) Stage 2: Partial thickness skin loss involving epidermis and/or dermis. The ulcer is superficial and presents clinically as an abrasion, blister, or shallow crater.	0	1	2	3	4 or more
c) Stage 3: Full-thickness skin loss involving damage or necrosis of subcutaneous tissue which may extend down to, but not through, underlying fascia. The ulcer presents clinically as a deep crater with or without undermining of adjacent tissue.	0	1	2	3	4 or more
d) Stage 4: Full-thickness skin loss with extensive destruction, tissue necrosis, or damage to muscle, bone, or supporting structures (e.g., tendon, joint capsule, etc.)	0	1	2	3	4 or more
e) In addition to the above, is there at least one pressure ulcer that cannot be observed due to the presence of eschar or a nonremovable dressing, including casts? ☐ 0 - No ☐ 1 - Yes					

33b. Stage of Most Problematic (Observable) Pressure Ulcer:

☐ 1 - Stage 1
☐ 2 - Stage 2
☐ 3 - Stage 3
☐ 4 - Stage 4
☐ NA - No observable pressure ulcer

33c. Status of Most Problematic (Observable) Pressure Ulcer:

☐ 1 - Fully granulating
☐ 2 - Early/partial granulation
☐ 3 - Not healing
☐ NA - No observable pressure ulcer

34. Does this patient have a **Stasis Ulcer**?

☐ 0 - No **[If No, go to *Question 35*]**
☐ 1 - Yes

34a. Current Number of Observable Stasis Ulcer(s):

☐ 0 - Zero
☐ 1 - One
☐ 2 - Two
☐ 3 - Three
☐ 4 - Four or more

34b. Does this patient have at least one **Stasis Ulcer that Cannot be Observed** due to the presence of a nonremovable dressing?

☐ 0 - No
☐ 1 - Yes

34c. Status of Most Problematic (Observable) Stasis Ulcer:

- ☐ 1 - Fully granulating
- ☐ 2 - Early/partial granulation
- ☐ 3 - Not healing
- ☐ NA - No observable stasis ulcer

35. Does this patient have a **Surgical Wound?**

- ☐ 0- No **[If No, go to *Question 36*]**
- ☐ 1- Yes

35a. Current Number of (Observable) Surgical Wounds: (If a wound is partially closed but has more than one opening, consider each opening as a separate wound.)

- ☐ 0 - Zero
- ☐ 1 - One
- ☐ 2 - Two
- ☐ 3 - Three
- ☐ 4 - Four or more

35b. Does this patient have at least one **Surgical Wound that Cannot be Observed** due to the presence of a nonremovable dressing?

- ☐ 0 - No
- ☐ 1 - Yes

35c. Status of Most Problematic (Observable) Surgical Wound:

- ☐ 1 - Fully granulating
- ☐ 2 - Early/partial granulation
- ☐ 3 - Not healing
- ☐ NA - No observable surgical wound

RESPIRATORY STATUS

36. When is the patient dyspneic or noticeably **Short of Breath?**

- ☐ 0 - Never, patient is not short of breath
- ☐ 1 - When walking more than 20 feet, climbing stairs
- ☐ 2 - With moderate exertion (e.g., while dressing, using commode or bedpan, walking distances less than 20 feet)
- ☐ 3 - With minimal exertion (e.g., while eating, talking, or performing other ADLs) or with agitation
- ☐ 4 - At rest (during day or night)

37. Respiratory Treatments utilized at home: **(Mark all that apply.)**

- ☐ 1 - Oxygen (intermittent or continuous)
- ☐ 2 - Ventilator (continually or at night)
- ☐ 3 - Continuous positive airway pressure
- ☐ 4 - None of the above

ELIMINATION STATUS

38. Has this patient been treated for a **Urinary Tract Infection** in the past 14 days?

- ☐ 0 - No
- ☐ 1 - Yes
- ☐ NA - Patient on prophylactic treatment
- ☐ UK - Unknown

39. Urinary Incontinence or Urinary Catheter Presence:

- ☐ 0 - No incontinence or catheter (includes anuria or ostomy for urinary drainage) **[If No, go to *Question 41*]**
- ☐ 1 - Patient is incontinent
- ☐ 2 - Patient requires a urinary catheter (i.e., external, indwelling, intermittent, suprapubic) **[Go to *Question 41*]**

40. When does **Urinary Incontinence** occur?

- ☐ 0 - Timed-voiding defers incontinence
- ☐ 1 - During the night only
- ☐ 2 - During the day and night

41. Bowel Incontinence Frequency:

- ☐ 0 - Very rarely or never has bowel incontinence
- ☐ 1 - Less than once weekly
- ☐ 2 - One to three times weekly
- ☐ 3 - Four to six times weekly
- ☐ 4 - On a daily basis
- ☐ 5 - More often than once daily
- ☐ NA - Patient has ostomy for bowel elimination
- ☐ UK - Unknown

42. Ostomy for Bowel Elimination: Does this patient have an ostomy for bowel elimination that (within the last 14 days): a) was related to an inpatient facility stay, or b) necessitated a change in medical or treatment regimen?

- ☐ 0 - Patient does not have an ostomy for bowel elimination.
- ☐ 1 - Patient's ostomy was not related to an inpatient stay and did not necessitate change in medical or treatment regimen.
- ☐ 2 - The ostomy was related to an inpatient stay or did necessitate change in medical or treatment regimen.

NEURO/EMOTIONAL/BEHAVIORAL STATUS

43. Cognitive Functioning: (Patient's current level of alertness, orientation, comprehension, concentration, and immediate memory for simple commands.)

- ☐ 0 - Alert/oriented, able to focus and shift attention, comprehends and recalls task directions independently.
- ☐ 1 - Requires prompting (cuing, repetition, reminders) only under stressful or unfamiliar conditions.
- ☐ 2 - Requires assistance and some direction in specific situations (e.g., on all tasks involving shifting of attention), or consistently requires low stimulus environment due to distractibility.
- ☐ 3 - Requires considerable assistance in routine situations. Is not alert and oriented or is unable to shift attention and recall directions more than half the time.
- ☐ 4 - Totally dependent due to disturbances such as constant disorientation, coma, persistent vegetative state, or delirium.

44. When Confused (Reported or Observed):

- ☐ 0 - Never
- ☐ 1 - In new or complex situations only
- ☐ 2 - On awakening or at night only
- ☐ 3 - During the day and evening, but not constantly
- ☐ 4 - Constantly
- ☐ NA - Patient nonresponsive

45. When Anxious (Reported or Observed):

- ☐ 0 - None of the time
- ☐ 1 - Less often than daily
- ☐ 2 - Daily, but not constantly
- ☐ 3 - All of the time
- ☐ NA - Patient nonresponsive

46. Depressive Feelings Reported or Observed in Patient: (Mark all that apply.)

- ☐ 1 - Depressed mood (e.g., feeling sad, tearful)
- ☐ 2 - Sense of failure or self reproach
- ☐ 3 - Hopelessness
- ☐ 4 - Recurrent thoughts of death
- ☐ 5 - Thoughts of suicide
- ☐ 6 - None of the above feelings observed or reported

47. Patient Behaviors (Reported or Observed): (Mark all that apply.)

- ☐ 1 - Indecisiveness, lack of concentration
- ☐ 2 - Diminished interest in most activities
- ☐ 3 - Sleep disturbances
- ☐ 4 - Recent change in appetite or weight
- ☐ 5 - Agitation
- ☐ 6 - A suicide attempt
- ☐ 7 - None of the above behaviors observed or reported

48. Behaviors Demonstrated <u>at Least Once a Week</u> (Reported or Observed): (Mark all that apply.)

- ☐ 1 - Memory deficit: failure to recognize familiar persons/places, inability to recall events of past 24 hours, significant memory loss so that supervision is required
- ☐ 2 - Impaired decision-making: failure to perform usual ADLs or IADLs, inability to appropriately stop activities, jeopardizes safety through actions
- ☐ 3 - Verbal disruption: yelling, threatening, excessive profanity, sexual references, etc.
- ☐ 4 - Physical aggression: aggressive or combative to self and others (e.g., hits self, throws objects, punches, dangerous maneuvers with wheelchair or other objects)
- ☐ 5 - Disruptive, infantile, or socially inappropriate behavior (**excludes** verbal actions)
- ☐ 6 - Delusional, hallucinatory, or paranoid behavior
- ☐ 7 - None of the above behaviors demonstrated

49. Frequency of Behavior Problems (Reported or Observed) (e.g., wandering episodes, self abuse, verbal disruption, physical aggression, etc.):

- ☐ 0 - Never
- ☐ 1 - Less than once a month
- ☐ 2 - Once a month
- ☐ 3 - Several times each month
- ☐ 4 - Several times a week
- ☐ 5 - At least daily

50. Is this patient receiving **Psychiatric Nursing Services** at home provided by a qualified psychiatric nurse?

- ☐ 0 - No
- ☐ 1 - Yes

ADL/IADLs

For Questions 51-67, complete the "current" column for all patients. For these same items, complete the "prior" column only at start of care; mark the level that corresponds to the patient's condition 14 days prior to start of care. In all cases, record what the patient is *able to do*.

51. Grooming: Ability to tend to personal hygiene needs (i.e., washing face and hands, hair care, shaving or make up, teeth or denture care, fingernail care).

Prior Current
- ☐ ☐ 0 - Able to groom self unaided, with or without the use of assistive devices or adapted methods.
- ☐ ☐ 1 - Grooming utensils must be placed within reach before able to complete grooming activities.
- ☐ ☐ 2 - Someone must assist the patient to groom self.
- ☐ ☐ 3 - Patient depends entirely upon someone else for grooming needs.
- ☐ UK - Unknown

52. Ability to Dress Upper Body (with or without dressing aids) including undergarments, pullovers, front-opening shirts and blouses, managing zippers, buttons, and snaps:

Prior Current
- ☐ ☐ 0 - Able to get clothes out of closets and drawers, put them on and remove them from the upper body without assistance.
- ☐ ☐ 1 - Able to dress upper body without assistance if clothing is laid out or handed to the patient.
- ☐ ☐ 2 - Someone must help the patient put on upper body clothing.
- ☐ ☐ 3 - Patient depends entirely upon another person to dress the upper body.
- ☐ UK - Unknown

53. Ability to Dress Lower Body (with or without dressing aids) including undergarments, slacks, socks or nylons, shoes:

Prior Current
- ☐ ☐ 0 - Able to obtain, put on, and remove clothing and shoes without assistance.
- ☐ ☐ 1 - Able to dress lower body without assistance if clothing and shoes are laid out or handed to the patient.
- ☐ ☐ 2 - Someone must help the patient put on undergarments, slacks, socks or nylons, and shoes.
- ☐ ☐ 3 - Patient depends entirely upon another person to dress lower body.
- ☐ UK - Unknown

54. Bathing: Ability to wash entire body. **Excludes grooming (washing face and hands only).**

Prior Current
- ☐ ☐ 0 - Able to bathe self in shower or tub independently.
- ☐ ☐ 1 - With the use of devices, is able to bathe self in shower or tub independently.
- ☐ ☐ 2 - Able to bathe in shower or tub with the assistance of another person:
  (a) for intermittent supervision or encouragement or reminders, OR
  (b) to get in and out of the shower or tub, OR
  (c) for washing difficult to reach areas.
- ☐ ☐ 3 - Participates in bathing self in shower or tub, but requires presence of another person throughout the bath for assistance or supervision.
- ☐ ☐ 4 - Unable to use the shower or tub and is bathed in bed or bedside chair.
- ☐ ☐ 5 - Unable to effectively participate in bathing and is totally bathed by another person.
- ☐ UK - Unknown

55. Toileting: Ability to get to and from the toilet or bedside commode.

Prior Current
- ☐ ☐ 0 - Able to get to and from the toilet independently with or without a device.
- ☐ ☐ 1 - When reminded, assisted, or supervised by another person, able to get to and from the toilet.
- ☐ ☐ 2 - Unable to get to and from the toilet but is able to use a bedside commode (with or without assistance).
- ☐ ☐ 3 - Unable to get to and from the toilet or bedside commode but is able to use a bedpan/urinal independently.
- ☐ ☐ 4 - Is totally dependent in toileting.
- ☐ UK - Unknown

56. **Transferring:** Ability to move from bed to chair, on and off toilet or commode, into and out of tub or shower, and ability to turn and position self in bed if patient is bedfast.

Prior Current
- ☐ ☐ 0 - Able to independently transfer.
- ☐ ☐ 1 - Transfers with minimal human assistance or with use of an assistive device.
- ☐ ☐ 2 - Unable to transfer self but is able to bear weight and pivot during the transfer process.
- ☐ ☐ 3 - Unable to transfer self and is unable to bear weight or pivot when transferred by another person.
- ☐ ☐ 4 - Bedfast, unable to transfer but is able to turn and position self in bed.
- ☐ ☐ 5 - Bedfast, unable to transfer and is unable to turn and position self.
- ☐ UK - Unknown

57. **Ambulation/Locomotion:** Ability to SAFELY walk, once in a standing position, or use a wheelchair, once in a seated position, on a variety of surfaces.

Prior Current
- ☐ ☐ 0 - Able to independently walk on even and uneven surfaces and climb stairs with or without railings (i.e., needs no human assistance or assistive device).
- ☐ ☐ 1 - Requires use of a device (e.g., cane, walker) to walk alone or requires human supervision or assistance to negotiate stairs or steps or uneven surfaces.
- ☐ ☐ 2 - Able to walk only with the supervision or assistance of another person at all times.
- ☐ ☐ 3 - Chairfast, unable to ambulate but is able to wheel self independently.
- ☐ ☐ 4 - Chairfast, unable to ambulate and is unable to wheel self.
- ☐ ☐ 5 - Bedfast, unable to ambulate or be up in a chair.
- ☐ UK - Unknown

58. **Feeding or Eating:** Ability to feed self meals and snacks. **Note: This refers only to the process of eating, chewing, and swallowing, not preparing the food to be eaten.**

Prior Current
- ☐ ☐ 0 - Able to independently feed self.
- ☐ ☐ 1 - Able to feed self independently but requires:
  (a) meal set-up; OR
  (b) intermittent assistance or supervision from another person; OR
  (c) a liquid, pureed or ground meat diet.
- ☐ ☐ 2 - Unable to feed self and must be assisted or supervised throughout the meal/snack.
- ☐ ☐ 3 - Able to take in nutrients orally and receives supplemental nutrients through a nasogastric tube or gastrostomy.
- ☐ ☐ 4 - Unable to take in nutrients orally and is fed nutrients through a nasogastric tube or gastrostomy.
- ☐ ☐ 5 - Unable to take in nutrients orally or by tube feeding.
- ☐ UK - Unknown

59. **Planning and Preparing Light Meals** (e.g., cereal, sandwich) or reheat delivered meals:

Prior Current
- ☐ ☐ 0 - (a) Able to independently plan and prepare all light meals for self or reheat delivered meals; OR
  (b) Is physically, cognitively, and mentally able to prepare light meals on a regular basis but has not routinely performed light meal preparation in the past (i.e., prior to this home care admission).
- ☐ ☐ 1 - Unable to prepare light meals on a regular basis due to physical, cognitive, or mental limitations.
- ☐ ☐ 2 - Unable to prepare any light meals or reheat any delivered meals.
- ☐ UK - Unknown

60. **Transportation:** Physical and mental ability to safely use a car, taxi, or public transportation (bus, train, subway).

Prior Current
- ☐ ☐ 0 - Able to independently drive a regular or adapted car; OR uses a regular or handicap-accessible public bus.
- ☐ ☐ 1 - Able to ride in a car only when driven by another person; OR able to use a bus or handicap van only when assisted or accompanied by another person.
- ☐ ☐ 2 - Unable to ride in a car, taxi, bus, or van, and requires transportation by ambulance.
- ☐ UK - Unknown

61. **Laundry:** Ability to do own laundry -- to carry laundry to and from washing machine, to use washer and dryer, to wash small items by hand.

Prior Current

☐ ☐ 0 - (a) Able to independently take care of all laundry tasks; OR
(b) Physically, cognitively, and mentally able to do laundry and access facilities, but has not routinely performed laundry tasks in the past (i.e., prior to this home care admission).

☐ ☐ 1 - Able to do only light laundry, such as minor hand wash or light washer loads. Due to physical, cognitive, or mental limitations, needs assistance with heavy laundry such as carrying large loads of laundry.

☐ ☐ 2 - Unable to do any laundry due to physical limitation or needs continual supervision and assistance due to cognitive or mental limitation.

☐ UK - Unknown

62. **Housekeeping:** Ability to safely and effectively perform light housekeeping and heavier cleaning tasks.

Prior Current

☐ ☐ 0 - (a) Able to independently perform all housekeeping tasks; OR
(b) Physically, cognitively, and mentally able to perform all housekeeping tasks but has not routinely participated in housekeeping tasks in the past (i.e., prior to this home care admission).

☐ ☐ 1 - Able to perform only light housekeeping (e.g., dusting, wiping kitchen counters) tasks independently.

☐ ☐ 2 - Able to perform housekeeping tasks with intermittent assistance or supervision from another person.

☐ ☐ 3 - Unable to consistently perform any housekeeping tasks unless assisted by another person throughout the process.

☐ ☐ 4 - Unable to effectively participate in any housekeeping tasks.

☐ UK - Unknown

63. **Shopping:** Ability to plan for, select, and purchase items in a store and to carry them home or arrange delivery.

Prior Current

☐ ☐ 0 - (a) Able to plan for shopping needs and independently perform shopping tasks, including carrying packages; OR
(b) Physically, cognitively, and mentally able to take care of shopping, but has not done shopping in the past (i.e., prior to this home care admission).

☐ ☐ 1 - Able to go shopping, but needs some assistance:
(a) By self is able to do only light shopping and carry small packages, but needs someone to do occasional major shopping; OR
(b) Unable to go shopping alone, but can go with someone to assist.

☐ ☐ 2 - Unable to go shopping, but is able to identify items needed, place orders, and arrange home delivery.

☐ ☐ 3 - Needs someone to do all shopping and errands.

☐ UK - Unknown

64. **Ability to Use Telephone:** Ability to answer the phone, dial numbers, and effectively use the telephone to communicate.

Prior Current

☐ ☐ 0 - Able to dial numbers and answer calls appropriately and as desired.

☐ ☐ 1 - Able to use a specially adapted telephone (i.e., large numbers on the dial, teletype phone for the deaf) and call essential numbers.

☐ ☐ 2 - Able to answer the telephone and carry on a normal conversation but has difficulty with placing calls.

☐ ☐ 3 - Able to answer the telephone only some of the time or is able to carry on only a limited conversation.

☐ ☐ 4 - Unable to answer the telephone at all but can listen if assisted with equipment.

☐ ☐ 5 - Totally unable to use the telephone.

☐ ☐ NA - Patient does not have a telephone.

☐ UK - Unknown

MEDICATIONS

65. **Management of Oral Medications:** Patient's ability to prepare and take all prescribed oral medications reliably and safely, including administration of the correct dosage at the appropriate times/intervals. **Excludes injectable and IV medications. (NOTE: This refers to ability, not compliance or willingness.)**

Prior Current

- ☐ ☐ 0 - Able to independently take the correct oral medication(s) and proper dosage(s) at the correct times.
- ☐ ☐ 1 - Able to take medication(s) at the correct times if:
  (a) individual dosages are prepared in advance by another person; OR
  (b) given daily reminders; OR
  (c) someone develops a drug diary or chart.
- ☐ ☐ 2 - Unable to take medication unless administered by someone else.
- ☐ ☐ NA - No oral medications prescribed.
- ☐ UK - Unknown

66. **Management of Inhalant/Mist Medications:** Patient's ability to prepare and take all prescribed inhalant/mist medications (nebulizers, metered dose devices) reliably and safely, including administration of the correct dosage at the appropriate times/intervals. **Excludes all other forms of medication (oral tablets, injectable and IV medications).**

Prior Current

- ☐ ☐ 0 - Able to independently take the correct medication and proper dosage at the correct times.
- ☐ ☐ 1 - Able to take medication at the correct times if:
  (a) individual dosages are prepared in advance by another person, OR
  (b) given daily reminders.
- ☐ ☐ 2 - Unable to take medication unless administered by someone else.
- ☐ ☐ NA - No inhalant/mist medications prescribed.
- ☐ UK - Unknown

67. **Management of Injectable Medications:** Patient's ability to prepare and take all prescribed injectable medications reliably and safely, including administration of correct dosage at the appropriate times/intervals. **Excludes IV medications.**

Prior Current

- ☐ ☐ 0 - Able to independently take the correct medication and proper dosage at the correct times.
- ☐ ☐ 1 - Able to take injectable medication at correct times if:
  (a) individual syringes are prepared in advance by another person, OR
  (b) given daily reminders.
- ☐ ☐ 2 - Unable to take injectable medications unless administered by someone else.
- ☐ ☐ NA - No injectable medications prescribed.
- ☐ UK - Unknown

EQUIPMENT MANAGEMENT

68. **Patient Management of Equipment (includes ONLY oxygen, IV/infusion therapy, enteral/parenteral nutrition equipment or supplies):** Patient's ability to set up, monitor and change equipment reliably and safely, add appropriate fluids or medication, clean/store/dispose of equipment or supplies using proper technique. **(NOTE: This refers to ability, not compliance or willingness.)**

- ☐ 0 - Patient manages all tasks related to equipment completely independently.
- ☐ 1 - If someone else sets up equipment (i.e., fills portable oxygen tank, provides patient with prepared solutions), patient is able to manage all other aspects of equipment.
- ☐ 2 - Patient requires considerable assistance from another person to manage equipment, but independently completes portions of the task.
- ☐ 3 - Patient is only able to monitor equipment (e.g., liter flow, fluid in bag) and must call someone else to manage the equipment.
- ☐ 4 - Patient is completely dependent on someone else to manage all equipment.
- ☐ NA - No equipment of this type used in care **[If NA, go to *Question 70*]**

69. **Caregiver Management of Equipment (includes ONLY oxygen, IV/infusion equipment, enteral/parenteral nutrition, ventilator therapy equipment or supplies):** Caregiver's ability to set up, monitor, and change equipment reliably and safely, add appropriate fluids or medication, clean/store/dispose of equipment or supplies using proper technique. **(NOTE: This refers to ability, not compliance or willingness.)**

- ☐ 0 - Caregiver manages all tasks related to equipment completely independently.
- ☐ 1 - If someone else sets up equipment, caregiver is able to manage all other aspects.
- ☐ 2 - Caregiver requires considerable assistance from another person to manage equipment, but independently completes significant portions of task.
- ☐ 3 - Caregiver is only able to complete small portions of task (e.g., administer nebulizer treatment, clean/store/dispose of equipment or supplies).
- ☐ 4 - Caregiver is completely dependent on someone else to manage all equipment.
- ☐ NA - No caregiver
- ☐ UK - Unknown

EMERGENT CARE

70. **Emergent Care:** Since the last time OASIS data were collected, has the patient utilized any of the following services for emergent care (other than home care agency services)? **(Mark all that apply.)**

- ☐ 0 - No emergent care services **[If No emergent care and patient discharged, go to *Question 72*]**
- ☐ 1 - Hospital emergency room (includes 23-hour holding)
- ☐ 2 - Doctor's office emergency visit/house call
- ☐ 3 - Outpatient department/clinic emergency (includes urgicenter sites)
- ☐ UK - Unknown

71. **Emergent Care Reason:** For what reason(s) did the patient/family seek emergent care? **(Mark all that apply.)**

- ☐ 1 - Improper medication administration, medication side effects, toxicity, anaphylaxis
- ☐ 2 - Nausea, dehydration, malnutrition, constipation, impaction
- ☐ 3 - Injury caused by fall or accident at home
- ☐ 4 - Respiratory problems (e.g., shortness of breath, respiratory infection, tracheobronchial obstruction)
- ☐ 5 - Wound infection, deteriorating wound status, new lesion/ulcer
- ☐ 6 - Cardiac problems (e.g., fluid overload, exacerbation of CHF, chest pain)
- ☐ 7 - Hypo/Hyperglycemia, diabetes out of control
- ☐ 8 - GI bleeding, obstruction
- ☐ 9 - Other than above reasons
- ☐ UK - Reason unknown

DATA ITEMS COLLECTED AT INPATIENT FACILITY ADMISSION OR DISCHARGE ONLY

72. To which **Inpatient Facility** has the patient been admitted?

- ☐ 1 - Hospital **[Go to *Question 75*]**
- ☐ 2 - Rehabilitation facility **[Go to *Question 78*]**
- ☐ 3 - Nursing home **[Go to *Question 77*]**
- ☐ 4 - Hospice **[Go to *Question 78*]**
- ☐ NA - No inpatient facility admission

73. **Discharge Disposition:** Where is the patient after discharge from your agency? **(Choose only one answer.)**

- ☐ 1 - Patient remained in the community (not in hospital, nursing home, or rehab facility)
- ☐ 2 - Patient transferred to a noninstitutional hospice **[Go to *Question 78*]**
- ☐ 3 - Unknown because patient moved to a geographic location not served by this agency **[Go to *Question 78*]**
- ☐ UK - Other unknown **[Go to *Question 78*]**

74. After discharge, does the patient receive health, personal, or support **Services or Assistance**? **(Mark all that apply.)**

- ☐ 1 - No assistance or services received
- ☐ 2 - Yes, assistance or services provided by family or friends
- ☐ 3 - Yes, assistance or services provided by other community resources (e.g., meals-on-wheels, home health services, homemaker assistance, transportation assistance, assisted living, board and care)

Go to *Question 78*

75. If the patient was admitted to an acute care **Hospital**, for what **Reason** was he/she admitted?

- ☐ 1 - Hospitalization for emergent (unscheduled) care
- ☐ 2 - Hospitalization for urgent (scheduled within 24 hours of admission) care
- ☐ 3 - Hospitalization for elective (scheduled more than 24 hours before admission) care
- ☐ UK - Unknown

76. **Reason for Hospitalization: (Mark all that apply.)**

- ☐ 1 - Improper medication administration, medication side effects, toxicity, anaphylaxis
- ☐ 2 - Injury caused by fall or accident at home
- ☐ 3 - Respiratory problems (SOB, infection, obstruction)
- ☐ 4 - Wound or tube site infection, deteriorating wound status, new lesion/ulcer
- ☐ 5 - Hypo/Hyperglycemia, diabetes out of control
- ☐ 6 - GI bleeding, obstruction
- ☐ 7 - Exacerbation of CHF, fluid overload, heart failure
- ☐ 8 - Myocardial infarction, stroke
- ☐ 9 - Chemotherapy
- ☐ 10 - Scheduled surgical procedure
- ☐ 11 - Urinary tract infection
- ☐ 12 - IV catheter-related infection
- ☐ 13 - Deep vein thrombosis, pulmonary embolus
- ☐ 14 - Uncontrolled pain
- ☐ 15 - Psychotic episode
- ☐ 16 - Other than above reasons

Go to *Question 78*

77. For what **Reason(s)** was the patient **Admitted** to a **Nursing Home? (Mark all that apply.)**

- ☐ 1 - Therapy services
- ☐ 2 - Respite care
- ☐ 3 - Hospice care
- ☐ 4 - Permanent placement
- ☐ 5 - Unsafe for care at home
- ☐ 6 - Other
- ☐ UK - Unknown

78. **Date of Last (Most Recent) Home Visit:**

__ __ /__ __ /__ __ __ __
month day year

79. **Discharge/Transfer/Death Date:** Enter the date of the discharge, transfer, or death (at home) of the patient.

__ __ /__ __ / __ __ __ __
month day year

- ☐ UK - Unknown

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III. Provision of the Proposed Regulations

This proposed rule would add further requirements to the proposed regulations regarding conditions of participation for HHAs published elsewhere in this issue of the Federal Register. We would require that HHAs incorporate the use of the OASIS in their comprehensive assessment of their patients, and that they use data from the OASIS in their internal quality assessment and performance improvement programs. As we stated previously in this preamble, we are not yet proposing to require that HHAs collect and report OASIS data to a national data system or to use national comparative OASIS data as a part of their quality assessment and performance improvement programs.

- We would revise proposed § 484.55 ''Conditions of participation: Comprehensive assessment of patients'' by adding language to the introductory paragraph so that it would read as follows: ''Each patient must receive, and an HHA must provide, a patient-specific, comprehensive assessment * * * that incorporates the exact use of the current version of the Outcomes and Assessment Information Set (OASIS), as specified by the Secretary.'' We believe that this is the only added regulatory language necessary to require an HHA to incorporate the OASIS into its already existing comprehensive assessment process. While not stated explicitly in the language of the regulation, the OASIS is inappropriate for use with individuals under 21 years of age and is not intended for use with maternity cases. Information about the OASIS'' clinical applicability is part of the dataset procedures so we do not believe it is necessary to state in the proposed regulations that the use of the OASIS is not applicable to maternity cases and individuals under 21 years of age.
- We would also add language at proposed § 484.55(d)(1) to state that the comprehensive assessment must be updated and revised as frequently as the condition of the patient requires, but not less frequently than every 62 days. These updates must include the administration of the OASIS within every 57 to 62 days after the start of care. We are proposing to add this requirement to ensure that reassessments would be completed in time for the 62-day patient recertification.
- We would revise proposed § 484.55(d) to require that an HHA administer the OASIS ''within 48 hours of the patient's return to the home from a hospital admission for any reason except diagnostic testing. (This update includes the administration of the OASIS.)'' We are proposing to add the requirement that an assessment using the OASIS be administered after a hospital admission for any reason except diagnostic testing because we know that, typically, such a hospital admission can indicate a significant change in a patient's functional status.

We believe that the use of the OASIS upon the patient's return to the home would be useful from a care planning standpoint as part of the comprehensive assessment and as a significant functional status ''data point'' for comparative purposes. This event will trigger reporting of OASIS data as well in the future.

- We would add new § 484.55(e) to provide that the HHA must incorporate into its own assessment instrument, exactly as the OASIS is written, OASIS data items that include information regarding demographics and patient history, living arrangements, supportive assistance, sensory status, integumentary status, respiratory status, elimination status, neuro/emotional/behavioral status, activities of daily living, medications, equipment management, emergent care, and discharge.
- We would add language to § 484.65(a) ''Conditions of participation: Quality assessment and performance improvement'' to indicate that the HHA's quality assessment and performance improvement program must include at a minimum, quality indicator data derived from patient assessments, that must be included in data derived from the use of the OASIS.

While we are not yet proposing to require that HHAs collect and report OASIS data to a national data set, the incorporation of the OASIS into the comprehensive patient assessment would provide the HHA with a rich, internal database that it can begin to use for its internal quality assessment and performance improvement programs. For a home health company or a managed care organization, the availability of OASIS data for company-wide or organization-wide use would be helpful in measuring performance and identifying both those areas that need improvement and those areas where performance is exemplary. This information can be shared by HHAs throughout the company or organization to improve performance. Small HHAs can enter into arrangements with other HHAs to share data into a larger pool for the same purposes as larger organizations. The net result of this rulemaking, then, would be to require each HHA to use the OASIS as part of its comprehensive assessment of patients and to use that information not only for care planning and service delivery, but as a part of the HHA's quality assessment and performance improvement program.

While we believe we have accurately summarized the history of the development of quality indicators for home care, the potential uses of them in the near and longer-term future, and our planned regulatory approach to incorporating their use into the HHA conditions of participation, we welcome comments on all aspects of both this discussion and our regulatory approach to incorporating the use of quality indicators into the Medicare HHA benefit. As with any system of measurement, there are limitations to the home health care quality indicators (and the OASIS), and we have tried to be sensitive to those limitations. Commenters are urged to help us ensure that we have struck the proper balance between what our proposed approach can and likely cannot achieve.

IV. Impact Statement

A. Impact on HHAs

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless we certify that a proposed rule such as this would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, States and individuals are not considered small entities.

All HHAs are considered small entities for the purposes of the RFA. Consequently, we are including a statement of impact on the effect that this proposed rule would have on HHAs. This impact statement reflects *only* the impact of the provisions of this proposed rule. There are no costs in this impact analysis that stem from the proposed regulations regarding the HHA conditions of participation published elsewhere in this issue of the Federal Register. Only the costs associated with the introduction of the OASIS into the HHA conditions of participation are included in this impact statement and in the Collection of Information Requirements section of this preamble.

We anticipate that HHAs will incur some additional costs from implementation of this proposed rule. These costs are Medicare and Medicaid allowable costs and will be paid on a reasonable costs basis subject to the applicable Medicare and Medicaid rules. A chart projecting the costs to HHAs for the first five years of implementation of the use of the OASIS

is included at Section VI.C.1. We strongly believe that the benefits associated with the use of OASIS data will far outweigh its costs. As discussed in detail above, OASIS data will improve the delivery of quality care in the nation's HHAs in several ways. HHAs will find the information helpful in organizing their care planning. The increased specificity in patient assessment will assist agency staff to uniquely tailor a treatment plan to each individual patient.

On a more global scale, once data from the OASIS are available in the form of standardized outcome reports, consumers, purchasers, providers, and HCFA will be able to use information to evaluate quality of care across the full spectrum of HHAs. The home health industry can use the data for comparative performance assessment. HCFA and the State survey agencies will be able to use the data on a continuous basis to identify providers that are not performing to the norm. This use will allow us to further progress in our efforts to develop a more efficient and targeted survey approach.

As we discussed above, these proposed regulations would require that each HHA use a standard core assessment data set as part of its assessment of most adult patients. The impact of these proposed regulations would vary from HHA to HHA depending upon an HHA's current assessment process. The additional impact on HHA workload centers around collection of information and paperwork burden and is discussed in detail in the ''Collection of Information Requirements'' section of this preamble. There are no other requirements that would impact HHAs in these proposed regulations.

B. Rural Impact Statement

Section 1102(b) of the Social Security Act (the Act) requires us to prepare a regulatory impact analysis for any proposed rule that may have a significant impact on the operation of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is outside of a Metropolitan Statistical Area and has fewer than 50 beds. We are not preparing a rural impact statement since we have determined that this proposed rule would not have a significant impact on the operations of a substantial number of small rural hospitals.

C. Review by the Office of Management and Budget

In accordance with the provisions of Executive Order 12866, this proposed regulation was reviewed by the Office of Management and Budget.

V. Response to Comments

Because of the large number of items of correspondence we normally receive on Federal Register documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

VI. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, agencies are required to provide 60-day notice in the Federal Register and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- Whether the information collection is necessary and useful to carry out the proper functions of the agency;
- The accuracy of the agency's estimate of the information collection burden;
- The quality, utility, and clarity of the information to be collected; and
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques. Therefore, we are soliciting public comment on each of these issues for the proposed information collection requirements discussed below.

The proposed regulations at § 484.55 and § 484.65 would require HHAs to use the OASIS as part of a comprehensive assessment of the patient. The burden from requiring HHAs to collect the OASIS data can be divided into two categories. The first category encompasses activities that are required for startup. These activities include incorporating the OASIS data into an HHA's clinical records, initial acclimation to the OASIS, and training agency staff to use the OASIS data. After these initial startup activities, the second burden arises from the collection of the OASIS data on an ongoing basis.

A. Startup Activities: Time and Cost

We expect HHAs to incorporate the OASIS data into their clinical records both to minimize the documentation burden (for example, by not having to complete different forms with similar questions), and to increase the precision of patient assessments. Once the data items are incorporated into the clinical records, information can easily be collected at start of care and at each followup time point (that is, every 57 to 62 days; within 48 hours after the return home from a hospital admission; and at discharge).

The time required to revise clinical records to include OASIS items will vary for each agency, depending on the nature of their current documentation. For example, HHAs that have developed their own forms using word processing software may find it easier to merge or replace items than those agencies without that capability. Most HHAs are accustomed to revising patient assessment instruments periodically, as new assessment protocols become available or as new requirements by accrediting bodies or regulators are implemented. Once OASIS items are included in clinical record forms, HHAs should have only minor subsequent revisions to make with any future OASIS releases. The following estimates are based on the actual experience of the HHAs that participated in the development of the home health quality indicators.

1. Inclusion of OASIS Elements Into Assessment Forms

We define an average-size HHA as having 18 nurses and other service providers and 486 admissions per year. We estimate that the time required by an average-size HHA to revise assessment forms to accommodate the OASIS is approximately 8 hours for revision of the initial assessment forms. The HHA will also require an additional 4 hours for revision of clinical record forms at the 57 to 62 day assessment, and for the assessment within 48 hours after a return to home from a hospital admission. Many items in the discharge follow up are identical to these 2 follow up points, but there are several additional data elements associated with discharge that will result in an additional 4 hours for revisions of discharge forms. Thus, the total impact for clinical record forms revision is estimated to be 16 hours per agency for integration of OASIS items for all data collection time points. This estimate includes time associated with pilot testing the revised forms and subsequent revisions as necessary.

We do not believe that nursing staff need to complete the integration of OASIS data elements into an HHA's assessment forms. Therefore, we estimate that the cost for an average-size HHA to revise the clinical records will be $200, based on an hourly rate of $12.50 of clerical time. The total national hours for revisions of patient assessment forms is projected to be 146,992 hours for 9,187 HHAs (the number of certified facilities as of March 1996), with an associated national cost of $1.8 million.

2. Staff Training

We are assuming a total of 3.5 hours per nurse or other service provider within each HHA for purposes of estimating staff training time for the new OASIS recordkeeping. The Center for Health Services Research at the University of Colorado has written a guide, ''Item-by-Item Tips,'' for HHA use in training staff. This guide includes responses for frequently asked questions about OASIS items, and should be helpful to HHAs in the training of staff. Based on research conducted by the University of Colorado, training for data collection for initial assessments will require about 2 hours. Training for data collection for recertification assessments at the follow up points (that is, 57 to 62 day data collection and assessments within 48 hours after the return home from a hospital admission for any reason except diagnostic testing, includes a subset of admission items, but will require an additional 20 minutes of training. Collecting patient status data at discharge is likely to require the most significant modification of current HHA practice. This training will require about 40 minutes of training and will encompass both an introduction to a few specific data items and a discussion of revised agency procedures.

Part of the training described above would include an emphasis on data accuracy to ensure the production of meaningful outcome reports. Other procedures to be utilized by the agency to monitor data accuracy (including follow-behind visits, interdisciplinary comparisons, record reviews) require training as they are implemented. Several approaches to data auditing could be included in training of approximately 30 minutes. The projected 3.5 hours of training time is expected to cost an average HHA with 18 care providers about $1,515, based on an average hourly rate of $24.05 for a registered nurse. The total national training burden is projected to be 578,781 hours across all certified HHAs, at a cost of $13.9 million.

Once care providers are familiar with the OASIS items, OASIS data collection imposes a minimal burden above what care providers are currently doing to assess their patients. OASIS data are collected using a combination of staff observation and patient/care giver interviews. Initially, the OASIS data collection may take additional time until care providers become familiar with the precision and format of the items. Estimates from providers using clinical records with integrated OASIS items on the ''learning curve'' indicate that the use of the OASIS initially adds approximately 15 minutes to the start of care assessment. However, after using the OASIS approximately 5 times, the time required beyond the routine patient assessment to complete the OASIS decreases to approximately 2.5 minutes. Thus, the total ''startup'' or transitional burden until familiarity with OASIS for an average HHA is estimated to be 22.5 hours and to cost about $541, based on an average hourly rate of $24.05 for a registered nurse. This results in a national burden of 206,708 hours for all HHAs, at a cost of $5 million.

B. Ongoing Data Collection

Most items included in the OASIS require information that the majority of care providers currently gather during patient assessments. However, the OASIS employs a more precise scale. For instance, most care providers assess a patient's ability to bathe in the course of an assessment, but only using three levels (independent, needs moderate assistance, or dependent). The OASIS item for bathing requires that the care provider assess each patient's bathing ability on a more precise six-level scale.

In order to measure outcomes, OASIS data are collected at uniformly defined time points (start of care, every 57 to 62 days, within 48 hours after return to the home from a hospital admission for any reason except diagnostic testing, and at discharge). Some data items are unique to only one time point (for example, selected items are only collected at patient discharge), while other data are collected at every time point. By collecting data using uniform data items and time points, specific information on individual patients is comparable and can be aggregated to produce agency-level outcome reports that permit comparisons between different groups of patients (for example, a given HHA's patients relative to a national reference sample.)

OASIS data collection on an ongoing basis imposes a minimal burden above the routine patient assessment. We estimate that providers using clinical records with integrated OASIS items will need an additional 2.5 additional minutes for both start of care and for the followup assessment at the 57 to 62 day interval. Therefore, when collecting OASIS data, HHAs will spend an additional 2.5 minutes beyond what they currently use to complete the patient assessment at start of care. Similarly, at 57 to 62 day intervals, care providers currently conduct detailed assessments in order to review any needed changes in the plan of care for recertification. OASIS items are expected to require an additional 2.5 minutes above the routine assessment currently performed by home health agencies at 57 to 62 day intervals.

For home health episodes that began in 1992, HCFA billing data indicate that 42 percent of HHA patients would have had at least one 60-day follow up. Data from 1992 also indicate that 26 percent of patient home health episodes lasted more than 120 days requiring a second follow up, while 17 percent had episodes lasting 180 days or longer requiring a third follow up. Since the average HHA has 486 admissions per year, in conjunction with the episode length information from 1992, we estimate an impact per HHA of 20.3 hours per year for start-of-care assessments, and 17.2 hours per year for the 57 to 62 day intervals.

Factoring in an additional 2.5 minutes beyond what agencies currently do, we also estimate an additional burden of 5.1 hours per HHA for assessments conducted within 48 hours after a patient's return to home from a hospital admission for any reason except diagnostic testing. This assumes that 25 percent of patients are admitted to hospitals per year and require the resumption of home health services upon return to the home.

At discharge, care providers currently conduct a fairly brief assessment, only documenting significant changes in patients and the reason for discharge. However, OASIS requires that care providers conduct a more thorough patient assessment. This provides the information necessary to measure changes in patient health status over time and permits statistical analysis of patient outcomes (including aggregation of patient data to produce agency-level outcome reports). Therefore, while some additional burden is imposed on care providers, data collection at discharge is necessary to measure outcomes. Based on 486 admissions for an average HHA, and applying an incremental time increase of 8 minutes, the estimated total time necessary to complete the OASIS items at patient discharge is

projected to be 64.8 hours per year per agency.

Finally, as we stated earlier in this preamble, the OASIS will be updated and improved from time to time after implementation. We anticipate these changes to be refinements of existing items and the addition and deletion of items depending on utility or ineffectiveness. On balance, we believe the implementation of later iterations of the OASIS will result in a very small cost to HHAs. However, when such revisions are made, we will detail the related costs.

In total, we project that the total incremental ongoing time for an average HHA to complete OASIS data will be about 107.3 hours per year, with an associated cost of $2,583. Nationally, this will result in 1,077,721 hours of incremental time based on historical growth rates of 9.3 percent for HHAs, at an estimated cost of $25.9 million.

Again, we welcome comments on all aspects of the above material. Written comments on the information collection and recordkeeping requirement should be mailed directly to the following:

Health Care Financing Administration, Office of Financial and Human Resources, Management Planning and Analysis Staff, Room C2–26–17, 7500 Security Boulevard, Baltimore, MD 21244–1850; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Attention: Allison Herron Eydt, HCFA Desk Officer.

Any comments submitted on the collection of information requirements set forth in § 484.55 and § 484.65 must be received by these two offices on or before May 9, 1997, to enable OMB to act promptly on HCFA's information collection approval request.

C. Summary of Cost and Burden Estimates

The following tables summarize the total burden from the collection of the OASIS items:

1. NATIONAL COSTS TO HHAS FOR IMPLEMENTATION OF THE OASIS

Year*	Number of agencies incurring start-up costs	Start-up costs @ $2256 per HHA (in millions)	Ongoing costs @ $2583 per HHA (in millions)	Total costs (in millions)	Medicare costs (in millions)
1	9,187	$20.73	$23.73	$44.46	$22.23
2	864	1.93	25.94	27.86	13.93
3	934	2.11	28.35	30.46	15.23
4	1,021	2.30	30.99	33.29	16.64
5	1,006	2.52	33.87	36.38	18.19

*These costs are based on the assumption that date of implementation will be in fiscal year 1997.

2. BREAKDOWN OF AGENCY START UP AND ONGOING COSTS

Task	Agency costs (in dollars)	National costs—historic growth rate of 9.3% (Agency costs × 9,187 HHAs) (in millions of dollars)
Startup (one-time only) costs:		
Integration of OASIS into existing assessment forms	$200	$1.8
Staff training	1515	13.9
Learning curve	541	5.0
Total start up costs	2256	20.7
Ongoing costs:		
Initial care	488	4.5
Follow up (57–62 days)	414	3.8
Post-hospital admission	120	1.1
Discharges	1558	1.4
Total ongoing costs	2583	25.9
Total combined costs	4839	46.6

3. HOURLY BREAKDOWN AND COMPUTATION OF THE AVERAGE OASIS START-UP COSTS PER HHA

Task	Hours	Computation of average costs	Average cost
Intergration of OASIS into existing assessment forms:			
Revision of intial assessment forms	8		
Revision of clinical forms (57–62 day assessment)	4		
Revision of clinical forms (48 hours post-hospital admission)	4		
Total	16	16 hrs × $12.50 per hr (avg. clerical rate)	$200
Staff training:			
Data collection for initial assessment	2		

3. HOURLY BREAKDOWN AND COMPUTATION OF THE AVERAGE OASIS START-UP COSTS PER HHA—Continued

Task	Hours	Computation of average costs	Average cost
Data collection for recertification assessment at follow-up	0.3		
Data collection at discharge	0.7		
Data auditing	0.5		
Total	3.5	3.5 hrs × $24.05 per hr × 18 providers	1,515
Learning curve:			
Initial use of the OASIS data collection	0.25		
Next 4 uses of the OASIS data collection (4 × .25 hrs)	1		
Total	1.25	1.25 hrs × $24.05 per hr × 18 providers	541
Total	19.75		2,256

4. HOURLY BREAKDOWN AND COMPUTATION OF ONGOING OASIS COST BURDENS PER HHA

Task	Computation of hours	Total hours	Computation of average cost	Average cost
Initial care	486 admissions×2.5 min per admissions÷60 min.	20.3	20.3 hrs×$24.05 per hr	$488
Followup (57–62 days)	(42 percent of HHA patients×first follow-up×486 admissions) + (26 percent of HHA patients×second follow-ups×486 admissions)+(17 percent×third follow-up×486 admissions)=413 follow-ups—413 follow-ups×2.5 min per followup÷60 min.	17.2	Hrs×$24.05 per hr	414
Post-hospital admission	(486 admissions×.25 of HHA patients×2.5 min per admission)÷60 min.	5.1	5.1 hrs×$24.05 per hr	123
Discharge	(486 admissions×8 min per admission)÷60 min.	64.8	64.8 hrs×$24.05 per hr	1,558
Total		107.4		2,583

42 CFR Chapter IV would be amended as follows:

List of Subjects in 42 CFR Part 484

Health facilities, health professions, Medicare, Reporting and record keeping requirements.

Note to readers: The following proposed regulations text reflects changes to proposed regulation text published elsewhere in this issue of the Federal Register and not to regulations text in the existing Code of Federal Regulations.

HCFA proposes to amend 42 CFR Part 484 would be amended as set forth below.

PART 484—CONDITIONS OF PARTICIPATION: HOME HEALTH AGENCIES

A. The authority citation for part 484 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395(hh)).

B. In § 484.55, the introductory paragraph and paragraph (d) are revised and new paragraph (e) is added to read as follows:

§ 484.55 Condition of participation: Comprehensive assessment of patients.

Each patient must receive, and an HHA must provide, a patient-specific, comprehensive assessment that identifies the patient's need for home care, that meets the patient's medical, nursing, rehabilitative, social, and discharge planning needs, and that incorporates the exact use of the current version of the Outcomes and Assessment Information Set (OASIS), as specified by the Secretary.

* * * * *

(d) *Standard: Update of comprehensive assessment.* The comprehensive assessment must include information on the patient's progress toward clinical outcomes, and must be updated and revised—

(1) As frequently as the condition of the patient requires, but not less frequently than every 62 days. These updates must include the administration of the OASIS within every 57 to 62 days after the start of care;

(2) When the plan is revised for physician review;

(3) Within 48 hours of the patient's return to the home from a hospital admission for any reason except diagnostic testing (This update includes the administration of the OASIS.); and

(4) At discharge. (This update includes the administration of the OASIS.)

(e) *Standard: Incorporation of OASIS data items.* The OASIS data items must be incorporated into the HHA's own assessment instrument and must include, exactly as the OASIS is written, information regarding demographics and patient history, living arrangements, supportive assistance, sensory status, integumentary status, respiratory status, elimination status, neuro/emotional/behavioral status, activities of daily living, medications, equipment management, emergent care, and discharge information.

C. In § 484.65, paragraph (a)(1) is revised to read as follows:

§ 484.65 Condition of participation: Quality assessment and performance improvement.

* * * * *

(a) * * *

(1) Quality indicator data derived from patient assessments, including, at a minimum, data derived from the use of the OASIS, to determine if individual and aggregate measurable outcomes are achieved compared to a specified previous time period.

* * * * *

(Catalog of Federal Domestic Assistance Programs No 93.774, Medicare—Supplementary Medical Insurance, and No. 93,778, Medical Assistance Program)

Dated: January 21, 1997.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: January 30, 1997.

Donna E. Shalala,

Secretary.

[FR Doc. 97–5315 Filed 3–5–97; 9:45 am]

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Federal Register

Monday
March 10, 1997

Part V

The President

Proclamation 6977—National Poison Prevention Week, 1997

Federal Register
Vol. 62, No. 46
Monday, March 10, 1997

Presidential Documents

Title 3—

The President

Proclamation 6977 of March 5, 1997

National Poison Prevention Week, 1997

By the President of the United States of America

A Proclamation

This year, as we observe National Poison Prevention Week, we highlight two achievements: the effectiveness of child-resistant packaging required by the U.S. Consumer Product Safety Commission (CPSC) and the lifesaving work of the Nation's poison control centers. These public health efforts have reduced childhood poisoning deaths from 450 deaths in 1961 to 50 deaths in 1993. However, according to the American Association of Poison Control Centers, over one million children each year are exposed to potentially poisonous medicines and household chemicals.

Virtually all poisonings are preventable, and we must continue to inform parents, grandparents, and caregivers how to prevent childhood poisonings. The Poison Prevention Week Council, a coalition of 39 national organizations determined to stop accidental poisonings, distributes valuable information used by poison control centers, pharmacies, public health departments, and others to conduct poison prevention programs in their communities.

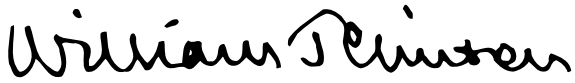
Simple safety measures—such as correctly using child-resistant packaging and keeping potentially harmful substances locked away from children—can save lives. And if a poisoning occurs, a poison control center can offer quick and lifesaving intervention.

The CPSC requires child-resistant packaging for many medicines and household chemicals. A recent CPSC study showed that every year approximately 24 children's lives are saved by child-resistant packaging for oral prescription medicines. The CPSC recently took action to ensure that child-resistant packaging will be easier for adults to use as well. This, in turn, will increase the use of child-resistant packaging, preventing more poisonings.

To encourage Americans to learn more about the dangers of accidental poisonings and to take more preventive measures, the Congress, by joint resolution approved September 26, 1961 (75 Stat. 681), has authorized and requested the President to issue a proclamation designating the third week of March of each year as ''National Poison Prevention Week.''

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim March 16 through March 22, 1997, as National Poison Prevention Week. I call upon all Americans to observe this week by participating in appropriate ceremonies and activities and by learning how to prevent accidental poisonings among children.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of March, in the year of our Lord nineteen hundred and ninety-seven, and of the Independence of the United States of America the two hundred and twenty-first.



[FR Doc. 97–6105
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1996. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1996. The CFR volume issued July 1, 1991, should be retained.

[6] No amendments were promulgated during the period October 1, 1995 to September 30, 1996. The CFR volume issued October 1, 1995 should be retained.